

CONFIDENTIAL

TITLE: THE SIZE AND COMPOSITION OF BARGAINING UNITS

AUTHOR: Professor E. Herman,
Department of Economics,
University of Cincinnati,
CINCINNATI, Ohio.

assisted by: Professor Gordon S. Skinner
Professor Howard M. Leftwich

Contributors of individual, or parts of chapters:

Mr. Bernard Brody
Mr. Thomas P. Sharp
Miss June Forster

Canada

DRAFT STUDY

prepared for

TASK FORCE ON LABOUR RELATIONS
(Privy Council Office)

[Studies]

PROJECT NO. 26

Submitted: MAY 1968

This draft study is deposited for library use
with the compliments of the author but must not be
quoted without his written permission.

CAI Z3
-68L26
CONFIDENTIAL

TITLE: THE SIZE AND COMPOSITION OF BARGAINING UNITS

AUTHOR: Professor E. Herman,
Department of Economics,
University of Cincinnati,
CINCINNATI, Ohio.

assisted by: Professor Gordon S. Skinner
Professor Howard M. Leftwich

Contributors of individual, or parts of chapters:

Mr. Bernard Brody
Mr. Thomas P. Sharp
Miss June Forster

DRAFT STUDY

prepared for

TASK FORCE ON LABOUR RELATIONS
(Privy Council Office)

PROJECT NO.: 26

Submitted: MAY 1968

This draft study is deposited for library use
with the compliments of the author but must not be
quoted without his written permission.



TABLE OF CONTENTS

Chapter		
I	INTRODUCTION.....	1
II	THE BARGAINING UNIT: AN INTRODUCTION.....	11
	Basic Definitions and Concepts.....	11
	The Bargaining Unit.....	11
	Categories of Bargaining Units: Type, Scope, and	12
	Number of Units.....	12
	Parties Involved in the Determination of Bargaining	17
	Units.....	17
	Bargaining Units and Decision-Making.....	27
	The Role of the Bargaining Unit in the Development	30
	of Public Policy.....	30
	The Role of the Bargaining Unit in the Development	37
	of Public Policy.....	37
III	CONCEPTS AND METHODS IN DETERMINING APPROPRIATE BARGAINING	40
	UNITS.....	40
	Concepts.....	42
	Principles and Policies in Bargaining Legislation.....	43
	R. S. Lewis.....	44
	Canadian Legislation.....	47
	Objectives of Public Policy in Industrial Relations.....	49
	Principles-Policy.....	49
	Bargaining Legislation.....	50
	Canadian Legislation.....	51



TABLE OF CONTENTS

Chapter

I	INTRODUCTION.....	1
II	THE BARGAINING UNIT: AN INTRODUCTION.....	11
	Some Basic Definitions and Concepts.....	11
	The Bargaining Unit.....	11
	Categories of Bargaining Units: Type, Scope, and Number of Unions.....	13
	Parties Involved in the Determination of Bargaining Units.....	17
	Bargaining Units and Decision-Making.....	22
	The Allocation of the Decision-Making Function Among Bargaining Units.....	22
	Bargaining Units and the Locus of Decision- Making Authority.....	27
	Bargaining Units and Questions of Representation....	32
	Summary.....	37
III	CRITERIA USED IN DETERMINING APPROPRIATE BARGAINING UNITS.....	42
	Introduction.....	42
	Principles and Policies in Existing Legislation.....	44
	U. S. Law.....	44
	Canadian Laws.....	47
	Objectives of Public Policy in Industrial Relations.	49
	"Laissez-Faire".....	49
	Maximum Industrial Freedom of Choice.....	50
	Stabilization of Collective Bargaining Relationships.....	51

	Minimize Disturbance of Existing Institutions..	52
	Maximization of National Economic Performance..	52
	Protection of the Public Interest.....	53
	Comments Regarding Objectives.....	55
	Criteria Employed in Determining Appropriate Bargaining Units.....	57
	Evaluation of Criteria.....	61
	Conclusions and Recommendations.....	64
IV	THE LAW AND THE BARGAINING UNIT IN CANADA.....	68
	Introduction.....	68
	What is the Law.....	68
	What are the Criticisms of the Law and are they Valid.....	71
	What are the Choices of Change to Meet Criticism, and Which Solution is the Best.....	77
	Is it Worth the Cost.....	93
V	BARGAINING UNITS AND THE ALLOCATION OF WORK.....	100
	The Problem.....	100
	Conflicts over Work Allocation within the Firm.....	104
	Work Allocation Conflicts and the Structure of Bargaining Units.....	104
	Public Policy and Inter-Union Work Jurisdiction Disputes within the Firm: Canada and the United States.....	108
	The Subcontracting Issue.....	113
	Factors Affecting Subcontracting Decisions: Economic, Technological, and Size of Plant.....	115
	Subcontracting and the Structure of Bargaining Units.....	117
	Subcontracting and Public Policy.....	122
VI	UNION COOPERATION, EMPLOYER COOPERATION, AND THE STRUCTURE OF BARGAINING UNITS.....	131
	Inter-Union Cooperation in Collective Bargaining....	131

	Techniques of Inter-Union Cooperation.....	133
	Inter-Union Cooperation: Causes and Implications.	135
	Inter-Union Cooperation and Public Policy.....	139
	Certification of Multi-Union Bargaining Units..	139
	Compulsory Conciliation and Inter-Union	
	Cooperation.....	143
	The "Duty to Bargain" Issue.....	145
	Employer Cooperation in Collective Bargaining..	147
	Coordination of Bargaining Positions.....	149
	Arrangements for Coordinating Bargaining	
	Positions.....	149
	Trends in Employer Coordination of Bargaining	
	Positions.....	155
	Mutual Assistance During Strikes.....	159
	"One-down-all-down": The Multi-Employer	
	Lockout.....	160
	Mutual Financial Assistance.....	162
	Employer Cooperation: Evaluation and Implications	
	for Public Policy.....	167
VII	THE STRUCTURE OF BARGAINING UNITS, CENTRALIZATION OF	
	DECISION-MAKING WITHIN UNIONS, AND SOME INTERNAL	
	UNION PROBLEMS.....	173
	Centralization of Decision-Making and the Structur-	
	ing of Collective Bargaining.....	174
	Forces Promoting Centralization of Decision-Making	
	in Unions.....	175
	Bargaining Unit Certification and Centralization	
	of Decision-Making in Unions.....	177
	Centralization and Some Internal Problems of Unions.	179
	Centralization and Union Democracy.....	179
	Effectiveness in Serving Members.....	181
VIII	MULTI-EMPLOYER BARGAINING.....	193
	Multi-Employer Bargaining and the Bargaining	
	Parties.....	194

Multi-Employer Bargaining and Bargaining Power....	195
Other Advantages of Multi-Employer Bargaining.....	198
Some Possible Difficulties of Multi-Employer Bargaining: The Negotiating Parties.....	207
Multi-Employer Bargaining and the Private Parties: An Evaluation.....	212
Multi-Employer Bargaining and the Economy.....	215
The Economic Effects of Multi-Employer Bargaining: The Indictment.....	217
The Economic Effects of Multi-Employer Bargaining: The Defense.....	220
Multi-Employer Bargaining and the Economy: Some Conclusions.....	225
Multi-Employer Bargaining: Appropriate Public Policy.....	227
Canadian and U. S. Multi-Employer Certification Practices.....	230
Canadian Labour Boards.....	230
Statutory Limitations on the Certification of Multi-Employer Bargaining Units.....	231
Actual Practices Regarding the Certification of Multi-Employer Bargaining Units.....	233
Two Labour Boards Active in Multi-Employer Certifications.....	237
Summary.....	239
The U. S. National Labor Relations Board.....	240
Certification of Multi-Employer Bargaining Units.....	242
De-certification Machinery.....	243
Evaluation of Multi-Employer Certification Pro- visions and Practices in Canada and the United States.....	245
Summary.....	249
IX THE CRAFT BARGAINING UNIT.....	256
Introduction.....	256

Craft Unions and Bargaining Units.....	257
Goals of Various Interest Groups in Seeking a Particular Bargaining Unit.....	259
The Public Interest.....	259
The Craft Interest.....	260
The Industrial Unions.....	263
The Employer.....	264
Mutual Interest of the Bargaining Parties.....	265
Implications of Craft Units.....	265
Craft Certification: United States and Canadian Laws and Practices.....	266
Defining the Craft Unit and Initial Certification.....	267
Carving Out Craft Groups from Existing Industrial Bargaining Units.....	270
Summary.....	274
Craft Certification, Industrial Conflict and the Supply of Skilled Labour.....	275
The Decline of the Wage and Non-Wage Differential and Possible Explanations for the Trend.....	279
The Craft, Non-Craft Differentials.....	281
The Skill Scarcity.....	284
Relationship between the Skill Differential and the Supply of Skilled Labour.....	285
Effect of Labour Board Policy.....	287
Possibilities for Change in Labour Boards' Policy.....	290
Alternatives and Criteria for Treatment of the Craft Group.....	291
No Recognition of the Craft Group as an Independent Bargaining Unit.....	292
Guaranteed Rights - Automatic Recognition.....	293
Criteria which Boards can Apply to Craft Certification.....	293
Complete Flexibility.....	299
Evaluation of Alternatives.....	304
The Multi-Craft Bargaining Unit.....	306
The Status Quo Approach.....	307
The Multi-Craft Bargaining Unit.....	308

	Hostility of Existing Craft Unions to Multi-	
	Craft Units.....	310
	Problems Emerging During Transition.....	312
	The Problems After the Transition.....	313
	The Attitudes of the Employer.....	314
	Problems Confronting the Boards.....	315
	Summary.....	318
	Conclusions.....	318
X	THE APPROPRIATE BARGAINING UNIT FOR QUEBEC.....	325
	Introduction.....	325
	The Existence of a Problem.....	326
	Evidence of a Problem.....	326
	Manifestation of the Problem.....	332
	The Issue.....	336
	Fractionalizing.....	337
	Fractionalizing: A Hypothetical Case.....	337
	Fractionalizing: Legal Considerations.....	338
	Freedom of Association.....	341
	Fractionalizing: The Quebec/CNTU Case.....	345
	CLRB Policy.....	346
	The Costs of Fractionalizing.....	355
	Cost One: Current Trends and Forces Bargaining	
	Unit Dynamics.....	355
	International Bargaining Units.....	356
	Purely Domestic Units.....	357
	Cost Two: National Unity.....	365
	Cost Three: Bargaining Power-Employees.....	365
	Cost Four: The Wage Structure.....	367
	Cost Five: The Costs of Strikes.....	368
	Cost Six: To Employers.....	369
	Cost Seven: Goods to the Public.....	369
	Cost Eight: Determination Rigidity.....	370
	Cost Nine: "Company Unions".....	371
	The Two Approaches.....	372

The Broader "Autonomy" Forces.....	374
"....found to be appropriate....".....	377
The "Convincing Ground" Criterion for Fractionalizing.....	378
Recommendations.....	379
Research.....	381
Conclusions.....	382
Size of the Bargaining Unit and Trade Union Structure.....	383
APPENDIX I - THE "VIABLE" BARGAINING UNIT.....	1
APPENDIX II - LIST OF THE "CARVING OUT" CASES.....	2
APPENDIX III- CLRB CRITERIA FOR THE "APPROPRIATE UNIT".	5
APPENDIX IV - THE CHANGING SIZE MIX OF CANADIAN MANUFACTURING ESTABLISHMENTS.....	12
XI . SUMMARY AND CONCLUSIONS.....	387

CHAPTER I

INTRODUCTION

Although the term "bargaining unit" became popular only after the enactment of certification legislation in Canada and the United States, its significance can be traced to pre-certification days. The issues surrounding the bargaining unit are as old as collective bargaining itself. In the pre-certification era whenever collective bargaining took place the question invariably arose - and had to be decided by the parties themselves - as to who should be covered by the agreement; in other words -- using certification nomenclature -- what should be the appropriate bargaining unit?

To find answers to this question was always difficult, but in a modern, complex, dynamic environment with which we are confronted today, the definition of the proper bargaining unit is much harder to formulate than ever before. There never were, nor are there now, any clear-cut standards for determination of an appropriate unit. The best one can hope for is to arrive at some value judgement. However, before any conclusions, pronouncements, or recommendations are made in this study, the advantages and disadvantages of different approaches are investigated and the cost and drawbacks of the recommended solutions given.

The number of bargaining unit studies in Canada is very limited. In the United States, much more data is available on this subject. Nevertheless, a great amount of work is still necessary in this area.

Particularly because of the evolutionary and dynamic forces in the North American labour relations environment, studies and conclusions from the past must be re-examined in view of new developments. This is one of the tasks of this study.

In different chapters of this work, the reader will encounter repetition of some of the arguments and statements, and even some contradictory conclusions. There are a number of reasons for this. There were a number of researchers working on this project. Although their effort was coordinated, some duplication was unavoidable or even desirable; to substantiate arguments concerning different sub-topics of this paper. The difference in value judgements and emphasis appearing in the different parts of this study are purposely included to reflect the absence of absolute answers for many of the problems in the area of bargaining units. In some chapters the repetition could have been eliminated, but a decision was made to leave it on the grounds that the continuity of argument presented would have suffered from such editing. Also, from the point of view of the Task Force, it should be easier to examine the various problems of the bargaining unit with the various topics appearing as separate entities.

The objectives of this study are as follows:

- (1) To evaluate the emerging structure of certified and actual bargaining units in view of the dynamic nature of industry, the economy, and the industrial relations framework.

(2) To examine developments and trends taking place in the economy, industry, and among the three major participants in the industrial relations system: government, management, and unions.

(3) To investigate on a comparative basis the determination of appropriate bargaining units and the philosophy, objectives and criteria applied in making such determination by the labour relations boards in Canada and by the NLRB in the United States.

(4) To analyze the legislative framework within the Canadian boards operate, particularly the division of jurisdiction among eleven boards, and also to investigate the impact of the Canadian constitutional allocation of legislative powers on the natural evolution of bargaining units.

(5) To inquire into the consequences of compulsory conciliation for bargaining units.

(6) To consider the relevance of the United States experience for Canada.

The study is divided into eleven chapters including this one.

The basic definitions and concepts of the bargaining unit are the topic of the second chapter. In this connection categories of bargaining units are examined as to type, scope, and number of unions. Some attention is devoted to the parties involved in the determination of bargaining units. Also, the allocation of decision-making functions among bargaining units is scrutinized, and the locus of decision-making authority inquired into. Finally, the issue of representation in determination of appropriate bargaining units is evaluated.

Criteria used in determining appropriate bargaining units are the topic of Chapter III. Amidst all the diversity of legislation and administrative practices in Canada and the United States, there stands out the fact that in both countries, administrative agencies are charged with determining appropriate units for collective bargaining. In making this decision, the boards have developed criteria to apply to cases coming before them. An evaluation of these and other criteria can only be made when one understands what an "appropriate" unit is. This chapter considers the meaning of appropriateness and contemplates various objectives of public policy which can, in turn, be used to evaluate how well specific criteria might meet the desired goals of public policy.

Chapter III is composed of five parts. Part I is an evaluation of the definition of the term "appropriate." Part II examines principles and policies in existing legislation in Canada and the United States. The

third part examines various objectives of public policy such as:

(a) "laissez-faire," (b) maximum industrial freedom of choice, (c) stabilization of collective bargaining relationships, (d) minimization of disturbance of existing institutions, (e) maximization of national economic performance, (f) protection of the public interest. Part IV evaluates criteria employed in determining appropriate bargaining units in Canada and the United States. The final part consists of conclusions and recommendations.

The impact of divided jurisdiction and compulsory conciliation on the natural evolution of bargaining units is one of the issues covered in Chapter IV. Methods for changes in the existing law are discussed. The need for centralization of legislative authority in the field of industrial relations is stressed. The costs and benefits of various approaches are outlined. A blueprint for a centralized labour relations board is provided. The chapter attempts to find answers to the following questions: What is the law? What are the criticisms of the law and are they valid? What are the choices of change to meet the criticism, and which solution is the best? Is it worth the cost?

The problem of disputes over work allocation, both within the firm and regarding the subcontracting of work outside the firm are the subjects covered in Chapter V. The chapter examines the relationship between work jurisdiction disputes and the structure of bargaining units

and the implications of this relationship for legislation and the policies and practices of labour relations boards regarding bargaining unit certification. The chapter discusses conflicts over work allocation within the firm. It relates these conflicts to the structures of bargaining units. It also inquires into public policy towards inter-union work jurisdiction disputes within the firm both in Canada and the United States.

The subcontracting issue is another major topic of this chapter. In this connection factors affecting subcontracting decisions, such as economic forces, technology, and size of plant are considered. Subcontracting is also examined, with respect to public policy and the structure of bargaining units.

In Chapter VI, the development of cooperation in collective bargaining among both unions and employers is examined. Inter-union cooperation is studied under the following headings: (a) techniques, (b) causes and implications, (c) the public policy. Subheadings consider certification of multi-union bargaining units, compulsory conciliation and the "duty to bargain" issues. The second part of this chapter covers employers cooperations. In this regard, arrangements for coordinating bargaining positions trends in employer coordination, and mutual assistance during strikes are discussed. Also, some space is devoted to the evaluation and implications of employer cooperation for public policy.

The trend towards greater centralization of decision-making and control over collective bargaining within national unions and some internal problems of unions which may be intensified by this trend are the topics of Chapter VII.

The chapter examines the forces promoting the centralization of decision-making in unions. It considers the relationship between bargaining unit certifications and centralization of decision-making in unions. Finally, the issues of union democracy, and the effectiveness of serving members under a centralized structure are considered.

In Chapter VIII, attention is focused on multi-employer bargaining units. The potential advantages of this type of bargaining structure for the negotiating parties, unions and managements, are examined in some detail, with stress being placed on why numerous multi-employer units have been established by voluntary agreement and the types of circumstances which promote such agreements. There follows an examination of the potential implications of multi-employer bargaining for the economy, that is, the public interest. The discussion of these topics provides a background for an examination of public policy towards multi-employer bargaining units in Canada and the United States. Relevant policies in both nations are evaluated and compared, and there are recommendations for changes in Canadian legislation and practices.

The craft bargaining unit and the appropriate location of craft employees within the collective bargaining framework are the topics examined in Chapter IX. The chapter is divided into six major parts, excluding introduction and conclusion.

The first part covers craft unionism and bargaining units in various industries. A distinction is made among industries dominated by craft unionism and those where industrial unionism prevails. The discussion also extends to industries which contain elements of both craft and industrial unionism.

The second part evaluates the goals of various interest groups in seeking a particular bargaining unit. Under this heading, the goals and interests of the public, the craft unions, the industrial unions, and the employer are analyzed. Some attention is also given to the mutual interest of the bargaining parties.

Canadian and United States legislation and craft certification practices is the theme of part three of this chapter. In this regard the definition of craft unit and its severance out of industrial units is discussed.

A significant aspect of this chapter is contained in part four which examines the relationship between craft certifications, industrial conflict, and the supply of skilled labour. In this connection the

historical decline of the wage and non-wage differential between skilled and non-skilled workers is substantiated and possible explanations for this trend given. The impact of labour relations board practices on the narrowing of the differential between craft and non-craft employees is also evaluated.

Alternatives and criteria for treatment of craft groups by labour relations boards are discussed in part five. The choices considered are: (a) refusal by a board to recognize a craft group as an independent bargaining unit, (b) automatic recognition, (c) complete flexibility, (d) application of one or more of the following criteria on which to establish recognition: (1) historical precedent, (2) community of interest, (3) common supervision, (4) degree of functional integration.

In part six a new approach to the craft issue is outlined. It is based on the establishment of multi-craft bargaining units. The concept of a multi-craft unit is explained and potential difficulties which could emerge during and after the transition period from the present craft structure are evaluated. Problems which could confront the boards in implementing multi-craft certification such as defining a craft, the issue of an appropriate union, and single versus multi-craft units are also examined.

The appropriate bargaining unit for Quebec is the topic of Chapter X. The conflict between the relative appropriateness of the system-wide and the regional bargaining unit is investigated.

The chapter evaluates the industrial relations implications of the refusal of the Canadian Labour Relations Board to carve the Quebec section out of existing national or system-wide units. The issues involved in current discussions as to the relative "appropriateness" of the system-wide versus the regional bargaining unit are considered. To this end a cost-benefit analysis is undertaken. The approaches to the problem are isolated into two parts: the "vacuum" approach and the "environmental" approach.

Finally, an effort is made to assess the results of past experience and solutions, and accommodations for the future are suggested.

In the last chapter, the highlights of the study and the recommendations made in various chapters are summarized. Conclusions are reached with regard to appropriateness of bargaining units and various alternatives open to legislators and labour relations boards with respect to the bargaining unit concept are provided.

CHAPTER II

THE BARGAINING UNIT: AN INTRODUCTION

The purpose of this chapter is to provide background material necessary to place the analysis contained in subsequent chapters in proper perspective. The concept of the "bargaining unit" and the various categories of bargaining units are investigated. There follows an examination of the roles of the three major parties involved in the determination of bargaining units: unions, employers, and government. The relationship between bargaining units and decision-making in collective bargaining is then studied, the discussion focusing on (1) various alternatives regarding the allocation of the decision-making function among bargaining units, and (2) situations in which the locus of decision-making authority is outside the bargaining unit. Finally, there is an evaluation of the role of bargaining unit certification decisions in determining questions of representation.

Some Basic Definitions and Concepts

The bargaining unit

A bargaining unit is a grouping of employees, all of whom are represented in the same bargaining negotiations and covered by the same collective agreement.¹

Such groupings may be officially sanctioned by law or may exist only on the basis of private agreements between unions and managements. An officially sanctioned bargaining unit is one in which all employees are "represented by a particular labour organization which has been certified by a Labour Relations Board as the exclusive bargaining agent for all employees in the group."² This may be called the certified bargaining unit. In both Canada and the United States, employers are under a legal obligation to bargain with certified bargaining units. In some cases employee groupings for purposes of collective bargaining have been determined "by the bargaining parties without the assistance of Labour Relations Boards and certification."³ Such units may be called voluntary bargaining units.⁴ Finally, and perhaps most important for the dynamics of industrial relations, is the operational bargaining unit, the group of workers which is actually represented in a single negotiation. Such a unit may be called the actual bargaining unit.⁵ The actual bargaining unit may or may not coincide with the certified unit. Today many actual bargaining units contain two or more certified and/or voluntary units established previously, and therefore represent an enlargement of the bargaining unit by mutual agreement between unions and managements.

Categories of bargaining units:
type, scope, and number of unions

A bargaining unit may be categorized by its type, scope, and the number of unions represented in it. "The type refers to the kinds of employees who are covered," while the scope "refers to the extent of the jurisdiction, in terms of the business units which are included."⁶ While the bargaining unit usually comprises only one national union, there are bargaining units in which two or more national unions (or their affiliates) negotiate jointly with a single management bargaining team.

According to Chamberlain, there are two basic types of bargaining units, the craft unit and the comprehensive or industrial unit. "The former includes only those workers who possess a specialized skill or perform a particularized function," and "is usually a splinter group of the main body of employees in a company." A comprehensive unit, on the other hand, "makes no such distinction between skills or functions, but includes all the employees on a payroll."⁸ In practice, few bargaining units would conform to a vigorous definition of either the craft or comprehensive types; rather, most are somewhere in between, as Chamberlain notes in the following passage:

.....if polar distinctions are made between craft and comprehensive units, very few of either will be found in our economic society. Most of the bargaining units which are established in practice will be found to be intermediate cases, falling somewhere between a craft and a comprehensive group, perhaps resembling one more than the other, but still not a pure type. For if we wished to set up polar distinctions, we would probably have to say that a craft unit would include only those workers performing a precise function for which special skill and training were required, a function performed by no others in the organization and with no others possessing the same skill and training. And a comprehensive unit would include all employees on a particular payroll whether they were involved in clerical, production, maintenance, or professional work, or subsidiary operations such as cafeteria work or trucking. Most cases, however, will show craft groups as being somewhat more comprehensive than this, and comprehensive groups as somewhat more exclusive than rigid definition would allow.

Craft groups thus may refer simply to groups of employees who, working together in a particular department, have a substantial nucleus of specially skilled workers. "Such departments are generally identifiable and homogeneous, perform operations substantially different from those performed in the rest of the plant, and have a history of separate bargaining; they have included boiler rooms, powerhouses, toolrooms, and machine shops. Such departments have, by custom and practice, come to be regarded as craft-like and separable."⁹ In other instances the craft unit has been extended to include all specially skilled employees, as opposed to the unskilled labor, an arrangement which should perhaps be considered the outside limit of what may be called a craft unit. The most frequently encountered comprehensive units are probably those comprising all the production workers, or all production and maintenance workers--something obviously less than the total of all employees.

Regarding scope--the business unit or units they cover--bargaining units vary widely.

(in scope, bargaining units) may range all the way from a single department or shop to an entire industry on a nationwide scale. In between we would find bargaining units whose areas would be a single plant, a number of plants of a single company (multi-plant units), all plants of a single company (company-wide), and then units embracing a number of companies (multi-employer). In this latter category are to be found in some instances companies which are in the same industry and in other instances companies which are joined together on a nonindustry basis, perhaps because they formerly all dealt with the same union individually and have banded together for mutual advantage. In both cases they may include companies on a metropolitan basis, a regional basis, or a national basis.¹⁰

Parenthetically, it should be emphasized that multi-employer bargaining units are not necessarily synonymous with industry-wide units. As many writers have stressed, multi-employer bargaining is common, while true industry-wide bargaining is relatively rare in Canada and the United States.¹¹

Finally, it is necessary to note a variant of multi-employer bargaining. Rigorously defined, multi-employer bargaining results in a single agreement signed by an employer association on behalf of all members. In some instances, however, terms established in a single negotiation between a union and an employer association are embodied in separate contracts for individual employers. Such an arrangement might be called "joint bargaining",

and, for practical purposes, it is closely related to multi-employer bargaining. The relationship is so close that many writers make no distinction between the two.

Regarding the number of national unions in the bargaining unit, the key distinction is between single-union and multi-union units. Multi-union bargaining is not new; it has been common in the construction industry for many years. Outside of construction, however, there have been few multi-union bargaining units. But recent attempts by industrial unions to coordinate their efforts in bargaining with large, diversified firms may signal a trend toward more multi-union bargaining units. The causes and implications of these attempts are examined elsewhere in this study.

In summary, bargaining units represent numerous combinations with respect to type, scope, and number of unions. There are single-plant (or single-location) units organized on a craft or comprehensive basis, or a combination of the two. There are multi-plant (or multi-location) units which may be company-wide or less than company-wide in scope, and organized on a craft and/or comprehensive basis. There are multi-employer units, which may be local, regional, or national in extent, and which offer the same range of alternatives regarding type as the previous two

categories. Finally, in all of these categories of bargaining units, bargaining may be either on a single-union or multi-union basis.

Parties Involved in the Determination
of Bargaining Units

Three parties are involved in the determination of bargaining units: unions, management, and government, through the medium of certification by Labour Relations Boards. The private parties, unions and managements, tend to press for a bargaining unit which they think will best serve their interests.¹² Three of the most important factors in the thinking of unions and managements regarding alternative bargaining units are (1) the balance of bargaining power, (2) the ease with which agreements may be negotiated and administered, and (3) the internal structure of union and management organizations. The determination of bargaining units is related to all of these matters. Regarding the interaction of private interests in determining the bargaining unit, Chamberlain has written as follows:

.....the bargaining unit will depend on the balancing of the relative interests of the employers and unions involved (which will profit, which will suffer from expansion or contradiction?); their relative bargaining power (as between employers and unions, which is better positioned to assert its will?); and their own internal authority (as between employers, is there a superior organization which can force a

decision on the reluctant members, as a parent company can force a subsidiary into line; and as between local unions, is there a national union powerful enough to obtain compliance from the dissentient?). This balancing may be precarious, and even units seemingly well established are subject to change over time.

Since the enactment of certification legislation in Canada and the U.S., the third major party in the determination of bargaining units are the Labour Relations Boards.¹⁴ In many cases the bargaining units established by Labour Relations Boards "are in all likelihood quite different from (those) that would have been arrived at by the bargaining parties if they had attempted to settle the issues themselves....."¹⁵ This is especially true with respect to craft units.

.....a group of craft employees in the precertification days, desiring to bargain with their employer as a unit separate from other employees, could probably have compelled the employer, through a show of strength, to bargain with them on such a basis. Now, since the "strike weapon" is no longer legally available to them, and since the employer will not usually grant them voluntary recognition, they have to attempt to achieve their goals through a Labour Relations Board. However, the chances of craft employees to form their own separate bargaining units have probably diminished since certification since, in recent years in some jurisdictions, Labour Relations Boards.....have not been too favourably disposed towards the certification of craft groups and, in particular, the carving out of craft from industrial groups. It is quite likely that without the certification process the position of craft unions in relation to industrial unions would have been stronger. It is also possible that there would have been more craft bargaining units than under the present certification system.¹⁶

Bargaining unit decisions by Labour Relations Boards are, then, an important determinant of the structure of collective bargaining, and therefore of significance for unions, employers, industrial relations, and the economy. The survival of a union in competition with a rival organization can be vitally affected by board decisions. Such decisions can determine how satisfactory bargaining arrangements will be from management's viewpoint; for example, dividing a single firm into a number of bargaining units forces management to negotiate separate contracts with different unions. In such a situation there may be competition between the unions, which could manifest itself in exaggerated demands during contract negotiations. Also, fragmenting a company into a number of certified bargaining units represented by rival unions can make it difficult for the firm to introduce company-wide personnel policies. Furthermore, the bargaining unit established by a Labour Relations Board can determine the outcome of a representation election, therefore whether or not there will be collective bargaining. Board decisions regarding the scope of bargaining units can have important implications for industrial peace and important economic matters such as the degree of uniformity of wages, hours

of work, and other working conditions among plants, firms, industries, and geographic areas. The bargaining results in a single-employer unit, for example, are likely to be different from what they would be in a multi-employer unit.¹⁷

Labour Relations Boards are not all-powerful, however, in determining bargaining units; as noted previously, there is still leeway for independent course by the private parties. Independent action may be clearly seen in the formation of large scale bargaining units. Many such units, including some of the largest, such as those in basic steel and over-the-road trucking in the U.S., have never been officially certified. Rather, they represent a consolidation of smaller certified and non-certified units which has been agreed upon by unions and employers.

Chamberlain has examined the process by which numerous existing large-scale, formally organized bargaining units have evolved from highly informal beginnings without certification by Labour Relations Boards.¹⁸ In such instances bargaining units often have been enlarged in the belief that larger units would enable collective bargaining to be more effective in solving the problems of particular firms and industries.¹⁹

Regarding the development of multi-employer units, Chamberlain has summarized the evolutionary process in many industries as follows:

A bargaining unit which includes more than one employer may arise very informally. Several companies which had been negotiating individually may decide that through collective action on their part they may secure better terms from the union. The experiment might be tried for one year, with or without the support of the union. If successful, the experiment is repeated, and the expanded unit becomes permanent. In time the companies may organize a formal association. They may invite other employers to join with them. What had begun as an informal group without aspirations for growth may become the spearhead for establishing a bargaining unit covering a much wider area.²⁰

Many multi-plant or company-wide bargaining units have resulted from a similar evolutionary process, although in such cases--for reasons discussed elsewhere in this study--union efforts may be more important in promoting evolution than in the case of multi-employer bargaining units.

Finally, it may be noted that Labour Relations Boards are guided by the private parties in several ways. First, boards can determine the appropriateness of bargaining units only after receiving petitions for certification, usually from the union; they cannot establish bargaining units on their own initiative. Second, although there are exceptions, boards "generally

will confirm a unit upon which the union and management parties have already agreed."²¹ Third, if there should be disagreement between union and management over the unit to be officially established, Labour Relations Boards will often be guided at least in part by current and past industry practices regarding bargaining units, even though these practices may have arisen from union-management agreements rather than Labour Relations Board decisions.²²

Bargaining Units and Decision-Making

The allocation of the decision-making function among bargaining units

If collective bargaining is to be regarded as a decision-making process, in any analysis of bargaining structure it must be recognized that the wages, hours of work, and other terms and conditions of employment applicable to a particular worker (i.e., the "web of rules" under which he works) may be determined in more than one bargaining unit. This is particularly true in industries where large-scale bargaining units exist. In many cases "there are bargaining units subsidiary to these primary units."²³ Where a national bargaining unit exists, for example, "there may be subsidiary regional units which negotiate supplementary agreements

on matters requiring local determination or of special interest," while "regional agreements may have their subsidiary city-wide agreements, and city-wide agreements may have special supplements negotiated for each individual firm or plant."²⁴ Each of the bargaining units mentioned--national, regional, city-wide, and individual plant or firm--deals with the problems which may be best handled at its level.

A whole hierarchy of bargaining units may thus be established, with each level having its own special field of competency, and in each case being bound by the terms of the agreement to which it is subsidiary. An example of such a system is provided by the bituminous coal industry, where a national agreement is negotiated (covering substantially the whole of the industry), setting forth the basic rates of pay, hours of work, and other conditions of employment. Under this master agreement, each district of the United Mine Workers negotiates supplementary agreements with district operators' associations. These district agreements are concerned principally with the preparation and cleaning of coal, disciplinary rules and penalties, and other factors involved in the day-to-day operation of the mines. Such district agreements, however, cannot provide for all the particular conditions of the individual mines, and local unions come together with local associations or individual companies to negotiate agreements supplementary to the district agreement. Problems like the undercutting of coal involve questions of wages and working conditions which can best be settled by reference to actual situations.

The combinations of bargaining units just described are of a vertical type; that is to say, they represent levels of business organization and control, such as the plant unit which is contained within the company unit or the local association

which is contained within the district association. Such combinations of units follow the organizational lines of the management and the union both There is in addition another type of combination possible, of what may, for want of a better term, be called the horizontal variety. A single master agreement setting forth general terms is supplemented by a series of separate craft or occupational agreements which provide for the peculiar interests of groups of employees. Here we have in reality a number of craft units within a comprehensive unit. For example, a California showcase and fixture company maintains a master agreement with the local building and construction trades council supplemented by agreements with the craft unions affected. In Toledo an association of department stores negotiates a master agreement with a council formed by thirteen different unions, and follows this with subsidiary agreements with each of the thirteen.²⁵

The discussion so far has centered on the allocation of the collective bargaining (decision-making) function among formal bargaining units, the result of negotiations normally being a written contract which is not inconsistent with any contract to which it is subsidiary. The focus of attention has been on the formal union-management relationships structured in formal bargaining units. Any realistic analysis of bargaining structure, however, must also take note of informal union-management relationships which may exist in the context of what may be regarded as informal bargaining units. Such units may be juxtaposed to one or more formal units. "Negotiations" in these units are highly informal, and result in informal understandings rather than written

agreements.

Informal bargaining units may be either larger or smaller than the formal units to which they are related. Examples of the former may be found in some industries characterized by single-employer bargaining and organized largely by one industrial union. The union may exercise a high degree of control over each negotiation and coordinate bargaining efforts to achieve a degree of standardization throughout the industry. Managements, too, may coordinate their bargaining positions and tactics. While there are no direct, formal negotiations between one union bargaining team representing all locals and one management team representing all firms, through informal communication between the national union and the management "group" there may be developed certain tacit understandings which will guide company-wide negotiations. Formally, bargaining is done in company-wide units; informally, there are at least the rudiments of an industry-wide unit. An example of an informal bargaining unit smaller than the formal one would be the case of a foreman "negotiating" certain employment terms with one or more of the men under his jurisdiction; the formal unit may be plant-wide, but the foreman and his crew constitute an informal subsidiary bargaining unit. Another example

is the case of a plant which is part of a multi-plant bargaining unit--which has no arrangements for formal, subsidiary agreements--and in which the management and local union have come to informal understandings regarding certain employment conditions.

Informal subsidiary bargaining units can pose serious problems of contract administration for both union and management. There is little difficulty when the informal unit is merely negotiating over how to properly interpret and apply the provisions of the master contract in the light of its particular circumstances. Through the grievance procedure, arrangements are made in advance for settling disputes over the interpretation of contract terms. Nor are there likely to be serious problems in the short run if the informal subsidiary bargaining units make decisions on matters not dealt with in the master agreement.²⁶ The major problem arises when informal subsidiary bargaining units develop arrangements which are contrary to the terms or intent of the master contract. Such arrangements may be developed when the parties in the informal subsidiary bargaining unit dislike certain provisions of the master agreement, feeling they do not meet the needs of the subsidiary unit or conform to the wishes of its members. It may be

arguable that these arrangements are necessary to provide needed flexibility in a collective bargaining structure which--formally and sometimes informally--is becoming increasingly centralized. The union(s) and management(s) negotiating the master agreement in the formal bargaining unit are likely, however, to take a dim view of non-conforming arrangements made by informal subsidiary bargaining units; such arrangements mean that the agreement they negotiated is not being lived up to.

Bargaining units and the locus of decision-making authority

The collective bargaining which takes place within the bargaining unit is essentially a process of decision-making. It must be recognized, however, that the decision-making authority of one or both parties in a particular bargaining unit may be limited in varying degree. In some cases the locus of decision-making authority on the union side, the management side, or on both sides, may--at least with respect to some issues--be outside the particular bargaining unit. One category of such cases has already been noted: the subsidiary bargaining unit in which decisions may be made on some bargaining issues, while on others the provisions of the master contract must be adhered to.

Another type of limitation exists where pattern

bargaining prevails. Here a contract negotiated by the pattern-setting firm or plant becomes a model for pattern-following firms or plants which constitute separate and at least nominally independent bargaining units, each with its own union-management contract.

Under pattern bargaining, the locus of decision-making authority for the entire complex of leader and follower bargaining units is in the pattern-setting unit(s). The extent to which this is true varies, of course, with the extent to which the follower units wish to duplicate the pattern-setting contract without significant changes.

Where pattern-setting agreements are adhered to closely, bargaining in the follower units may be largely perfunctory. The results of bargaining may resemble those of multi-employer bargaining regarding uniformity of contract terms applicable to all "associated" plants or firms.

The major difference is that unlike multi-employer bargaining there are no formal arrangements for the follower firms to participate in decision-making regarding the pattern-setting contract. In practice, it is often difficult to distinguish between pattern bargaining and informal multi-employer bargaining. As Pierson has noted, the distinction is often "more apparent than real, and actually the line of distinction is frequently blurred."²⁷

For a discussion of the mechanics of pattern bargaining, the conditions which promote its use, and the problems which may arise from pattern bargaining, see Shister, Economics of the Labor Market.²⁸

Regarding union bargaining policy, the locus of decision-making authority may be outside the bargaining unit if the union organization representing the unit must follow policies established by higher authority. This type of situation exists where a local union engaged in bargaining must follow policies established by the national union with which it is affiliated. The national union may dictate bargaining goals or at least minimum acceptable terms. It may implement its decisions by such devices as requiring national union approval of all contracts negotiated by affiliated locals or placing national representatives on local bargaining teams to ensure local conformance with national union policy. In such cases the local unions engaged in negotiations are not entirely free in making bargaining decisions even though they, rather than their parent nationals, are directly engaged in collective bargaining. The allocation of decision-making authority between the national union and its affiliates will, of course, vary among the various national unions.

An analogous situation exists on the management side when the management unit directly engaged in negotiations is not entirely free in making all bargaining decisions, but rather must conform to policies established by higher echelons of management. Such a situation may exist in a multi-plant firm in which each plant constitutes a separate bargaining unit negotiating its own contract. On at least some issues the local plant management, which is directly involved in negotiations, often is required to follow policies established by the firm's top management echelon. This type of situation may also exist where subsidiary firms, which are directly engaged in bargaining, are required to follow labour policies established by their parent firm.²⁹ As on the union side, the degree of autonomy in decision-making among subordinate management units directly engaged in bargaining varies.

It is arguable that the effectiveness of collective bargaining as a means of making decisions and solving problems bilaterally is reduced if decision-making units and bargaining units do not coincide. Collective bargaining works best if the actual decision-making units, on both the union and management sides, negotiate directly with each other. The majority report

of a United States Senate subcommittee contains the following observations on the effect on collective bargaining of centralized management decision-making coupled with decentralized bargaining in the telephone communications industry:

.....there have been developed among the various Bell companies uniform bargaining strategies and approaches which have slowed down and thwarted the collective bargaining process on the local company level, until bargaining has become steadily less and less effective, and strikes and threats of strikes, throughout the system, are becoming more and more common.....

The basic cause for the bad labor-management relations in the Bell System revolves around the collective bargaining process, and the inability of the unions to bargain at a level of management which possesses the responsibility and authority to make final decisions. We have seen that in this closely integrated system matters such as wages and pensions cannot be adequately dealt with at a local management level, where only a part of the problem can be considered. The subcommittee believes very definitely that A.T. & T. cannot expect to obtain collective bargaining within small segments throughout the system while it makes system-wide decisions for piecemeal application to those segments. When A.T. & T. bargained with CWA (Communication Workers of America) on system-wide issues, negotiations have been successful.³⁰

Where decision-making units for unions and/or managements are larger than bargaining units, two alternatives are available to make the units coincide. First, decision-making can be decentralized, so that union and management decisions are made within the bargaining unit. Second, the bargaining unit may be expanded until it is

coextensive with the decision-making unit. In the light of analysis presented elsewhere in this study, the second alternative would appear to be generally more feasible than the first.

Bargaining Units and Questions of Representation

While it is a basic premise of labour legislation in the U.S. and Canada that majority preferences of employees should decide questions of union representation, realistically the bargaining unit certification decisions of Labour Relations Boards must be regarded as a co-determinant. Since majority preferences can vary with alternative groupings of employees, bargaining unit decisions can determine such basic questions as whether there shall be collective bargaining in a firm, and if so, the extent of bargaining and the particular union or unions which shall win bargaining rights.

Bargaining unit decisions are especially important in determining whether representation shall be by craft or industrial unions. Consider, for example, manufacturing plants in which the labour force is typically composed mainly of semi-skilled and unskilled workers, together with a relatively small number of craft workers. In a plant-wide unit, the preferences of the former will predominate, and representation, if desired,

will be by an industrial union, even though the craftsmen might prefer representation by a craft union. Only if separate craft units are certified can craft groups expect to obtain representation by craft unions.

Bargaining unit certifications, therefore, are of vital importance to individual workers and particular groups of workers, to management, and to unions. For individuals and particular worker groups bargaining unit decisions can mean the difference between being in the majority or the minority with reference to representation questions. The weight given to the preferences of particular worker groups is determined by bargaining unit decisions, as illustrated by the craft versus comprehensive industrial unit case examined previously.

Since management is required by law to negotiate with a union commanding majority support in a certified bargaining unit, the unit determined can be crucial in deciding some fundamental issues for employers. Will there be collective bargaining? If so, will it apply to part or all of the plant? With how many unions must the employer negotiate? Must he deal with craft or industrial unions or both? With which specific unions must he deal? For multi-plant firms there are additional issues which may be decided by bargaining unit

determinations, such as whether all plants will be unionized and whether negotiations shall be plant-wide or company-wide.

For a union, bargaining unit decisions are important in that they help determine the size, strength, and security of the organization. Such decisions can determine whether the union will win any given representation election, and in so doing affect the size of the organization. While this is of significance to industrial unions, it is of even greater importance to craft unions. The boundaries of an industrial unit may favour one industrial union over another in a representation election and determine whether it will represent craft as well as lower-skilled workers in the plant. But in the absence of a conscious policy of favouritism by Labor Relations Boards, it is unlikely that a particular industrial union will be consistently hampered in winning representation elections by bargaining unit decisions. For craft unionism, however, board policies regarding craft versus industrial units may mean the difference between thriving craft organizations and stagnation, if not extinction. Policies and practices favouring the certification of comprehensive industrial units, if carried out over a long period of time, would promote a reduction in the size of craft

unions relative to industrial unions. Craft unions could eventually be forced to choose between stagnation caused by the frustration of organizing efforts resulting from bargaining unit decisions and modifying their internal structure to become more like industrial unions.

Bargaining unit decisions help determine not only whether a particular union will become bargaining agent, but also the security of an organization once it is established. In one respect a large certified bargaining unit favours the incumbent union. The larger the unit, the larger is the number of employees whose support must be gained by a rival union (or a "no union" movement) if the incumbent is to be displaced, hence the greater is the organizing effort required. If the workers included in a large unit were divided instead into a number of smaller units at least partial erosion of the incumbent's position could be accomplished by winning over individual smaller units piecemeal, beginning with those whose allegiance to the incumbent union was weakest. This could well be easier than winning over a single large bargaining unit.

In another respect, however, a large bargaining unit may make the incumbent union less secure. A union's ability to stay organized is affected by the cohesion of workers within the bargaining unit and their

satisfaction with the union. The more separate interest groups there are in a single bargaining unit the less cohesion there is likely to be, and the more difficult it is for the union to satisfy the various and diverse interests within the bargaining unit. It may also be noted that the certified bargaining unit can determine the degree of initial support for the union within the unit. One set of unit boundaries may encompass workers who are almost unanimous in favouring the union, while another may result in a bare majority for the union and a large minority who strongly oppose it. A union's chances of staying organized are likely to be better in the former situation.

Closely related to the original bargaining unit determination as a determinant of the incumbent union's security are the policies and practices of Labour Relations Boards regarding severance of new, smaller units from those previously certified. Permissiveness toward severance reduces the security derived by an incumbent union from the original certification of a large bargaining unit. Severance policy is especially important in situations of conflict between an incumbent industrial union and a craft union attempting to gain bargaining rights for craft workers originally

included in the industrial unit. Where craft workers become dissatisfied and desire separate representation, their ability to secede and affiliate with a craft union is determined by the board decision regarding craft severance.

Summary

The bargaining unit, a grouping of employees for purposes of collective bargaining, can take many forms. There are numerous possible combinations, with respect to type, scope, and the number of unions comprising the unit. Bargaining units may be determined by the certification decisions of Labour Relations Boards or without certification by mutual agreement between unions and employers. However, an employer's legal obligation to bargain extends only to certified bargaining units.

Because bargaining units can be established either by board certification or agreement between unions and employers, the structure of bargaining units may be regarded as being determined by the interaction among these three parties. While unions and employers retain the ability to combine certified bargaining units into larger units by mutual consent, it is likely that in many cases the certification decisions of Labour

Relations Boards result in the establishment of bargaining units different from those which would have emerged had the private parties alone made the decisions.

Board certification decisions, therefore, have important implications for unions, employers, industrial relations, and the economy.

Collective bargaining decisions regarding employment terms applicable to a particular worker or group of workers may be made in more than one bargaining unit. In some industries there is a formal hierarchy of bargaining units, with each level dealing with a particular set of issues. There are also situations in which decisions are made in informal bargaining units which may be either larger or smaller than the formal units, either certified or uncertified. In some cases the locus of decision-making authority in unions, management, or both is outside the bargaining unit. Where this occurs, there is the possibility that the effectiveness of collective bargaining within the bargaining unit will be reduced.

Regarding questions of representation, the bargaining unit certification decisions of Labour Relations Boards can be important determinants of whether there shall be union representation and collective bargaining, and if so, which union(s) shall win

bargaining rights. Certification decisions can also affect the security of a union after it has won bargaining rights. These matters are of vital importance to unions (especially craft unions), to individual workers and particular groups of workers, and to employers.

FOOTNOTES

1. Neil W. Chamberlain, Collective Bargaining (1st ed.) (New York: McGraw-Hill Book Company, 1951), p. 159.
2. Edward E. Herman, Determination of the Appropriate Bargaining Unit by Labour Relations Boards in Canada (Ottawa: Canada Department of Labour, Economics and Research Branch, 1966), p. 1.
3. Ibid.
4. Ibid.
5. Ibid.
6. Chamberlain, op. cit., p. 160.
7. Ibid.
8. Ibid.
9. Quotation from In the Matter of Allis-Chalmers Manufacturing Co., 77 NLRB 118 (1948). Source: Chamberlain, op. cit., p. 161.
10. Ibid., p. 161.
11. Ibid., p. 166.
12. The implications of various categories of bargaining units for unions and managements are examined in greater detail elsewhere in this study.
13. Chamberlain, op. cit., pp. 193-4.
14. Herman, op. cit., p. 6.
15. Ibid., p. 7.
16. Ibid., p. 8.
17. Ibid., pp. 8-9.
18. Chamberlain, op. cit., pp. 165, 194-7.
19. Ibid., pp. 194-7.
20. Ibid., p. 165.

21. Ibid., p. 197.
22. Ibid.
23. Ibid., p. 168.
24. Ibid.
25. Ibid., pp. 168-70.
26. In the longer run, however, such decisions might pose problems. Should the matters decided informally ever be covered by the master contract, there might well be the need to reconcile a large variety of practices which have gradually developed over time.
27. Frank C. Pierson, "Multi-Employer Bargaining," in E. Wight Bakke, Clark Kerr, and Charles Conrad, Unions, Management and the Public, 2nd ed. (New York: Harcourt, Brace and World, Inc., 1960), p. 347.
28. Joseph Shister, Economics of the Labor Market, 2nd ed. (Chicago: J. B. Lippincott Co., 1956), pp. 158-64.
29. For example, it is thought by some students of the U.S. telephone communications industry that the firms which comprise the Bell System--and which negotiate separately with unions--are bound on some issues by policies established by their parent company, the American Telephone and Telegraph Company. See Neil Chamberlain, Sourcebook on Labor (New York: McGraw-Hill Book Company, 1958), pp. 427-9.
30. Majority report of special subcommittee of the Senate Committee on Labor and Public Welfare, 83rd Congress, 1st Session, 1953. Quoted in Chamberlain, Sourcebook on Labor, pp. 427-8. Italics not in original.

CHAPTER III

CRITERIA USED IN DETERMINING APPROPRIATE BARGAINING UNITS

I. Introduction

For all the diversity in structure, content, and practice of labour relations laws in Canada and the United States, it is significant that in the Industrial Relations and Disputes Investigation Act, in the Provincial Labour Relations Acts, and in the U.S. National Labor Relations Act, the administrative agencies involved in applying the laws are charged with determining "appropriate units for collective bargaining." Therefore, of critical importance is an understanding of just what the term "appropriate bargaining unit" means and how such units can be chosen or identified by the Boards responsible for administering labour legislation.

None of the Acts mentioned specifically defines the word "appropriate" as it applies in the particular law. Webster's Third International Dictionary defines the word as "especially suitable," "fit," and "proper." It suggests fit as a synonym and defines fit as "adapted to an end, object or design." Thus the appropriate bargaining unit can vary according to what objectives one may have in mind. To use extreme examples, if one wished to minimize labour costs in the economy, appropriate bargaining units would be

of such size and composition that they would be unable to force higher wages from the employer. Or, if one wished to promote skilled craft unions, appropriate units might be determined by allowing each skilled worker to choose his own representative. This role of the word "appropriate" as being strongly influenced by objectives sought is reflected in Carrothers' comments, "I think it is convenient for our purposes to view law as being divided into principles, policies, and rules. The principles of the law relate to expressions of values, social, economic, political and moral..... I think it is apparent that a legal principle by itself is not an operative statement of law but is a statement of a philosophy or a goal to be pursued by the operative law. I regard a policy of the law to be a means for pursuing a legal principle. One is usually faced with selecting from a number of policies one which is considered best to give effect to a principle. It usually involves a statement of values, but it is less value oriented than is a principle, and the selection of a policy involves choosing between a number of available means to pursue a goal. A legal rule is a stratagem designed to implement a policy in pursuit of a principle."¹

In this context, appropriate bargaining units are those that best serve the policies and principles of the

societies writing the laws. The criteria employed in determining appropriate units can then be considered the "rules" of law.

An evaluation of alternative criteria used by labour relations boards to determine appropriate bargaining units revolves on an understanding of the principles and policies which are to be accomplished. The labour relations laws of Canada and its Provinces are almost completely lacking in outlining principles and policies, while the U.S. law provides explicit guidelines only to a moderate degree. The few principles which are indicated in the existing laws will first be examined, then some other principles which might be considered as objectives of labour relations legislation will be discussed.

II. Principles and Policies in Existing Legislation

A. U.S. Law

Section 1, "Findings and Policies," of the National Labor Relations Act of the United States contains the following statements (underlining added):

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively.....promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restricting equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Four principles and policies are identified in these passages:

- (1) Belief in the principle of collective bargaining;
- (2) Need to bring about "equality" of bargaining power;²
- (3) Necessity to remove sources of industrial strife;
- (4) Freedom of choice by the workers.

Section 9 (b) of the Wagner Act dealing with the appropriate unit states that to achieve these objectives:

"The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising

the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:" (several restrictions concerning professional, security and craft problems follow).³

Since the specific section dealing with appropriate units gives no particular guide except that the Board shall assure employees freedom in exercising rights guaranteed them under the Act, a look at those rights might be in order. They are stated in Section 7 of the Wagner Act:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.....

In this Section, the only specific statement that would guide bargaining-unit determination is the right of employees to bargain through representatives of their own choosing.

This review of U.S. legislation indicates that the guidance given the USNLRE is basically only that collective bargaining is to be encouraged and workers shall

have a voice in the choice of their representatives. Other Chapters in this study point out that many factors important in determining the appropriate unit are left unanswered by legislation. Yet the U.S. statute affords more assistance to the NLRB than is provided by the law to Canadian Boards.

B. Canadian Laws

The Industrial Relations and Disputes Investigation Act⁴ has no section similar to "Findings and Policies" of the NLRB. The IRDI definitions state that:

- (1) "Certified bargaining agent" means a bargaining agent that has been certified under the Act;⁵
- (2) A "unit" means a group of employees;⁶
- (3) "Appropriate for collective bargaining" with reference to a unit means that it is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, and whether or not the employees therein are employed by one or more employer.⁷

Section 3 of the Act, which is comparable to Section 7 of the U.S. Wagner Act, defines the right of employees and gives them the right to be members of a trade union and participate in its activities. Section 9 of the

IRDI Act describes the process when a union makes application for unit certification: "The Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate to do so, include additional employees in, or exclude employees from, the unit, and shall take such steps as it deems appropriate to determine the wishes of the employees in the unit as ^{to} the selection of a bargaining agent to act on their behalf."

The Canadian Law implies belief in collective bargaining; although it does not say so explicitly, it approves of different types of units and thinks that the employees should have some say (determined by government administrators) as to their bargaining agent.

The Provincial Laws are very similar to the IRDI Act. Only Nova Scotia and Prince Edward Island give any specific guidance with respect to principles in determining appropriate bargaining units. Section 9 (5) of the Trade Union Act of Nova Scotia and Section 16 (2) of the Industrial Relations Act of Prince Edward Island are identical:

The Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

The Nova Scotia and Prince Edward Island provisions are more in the nature of specific criteria to be employed by the boards than a statement of principles or policies which would serve as a guideline for the boards.

III. Objectives of Public Policy in Industrial Relations

Six public policy objectives pertinent to industrial relations are examined which are either explicit in the U.S. law or implicit in Canadian and U.S. laws.

1. "Laissez-faire"

Historically, laissez-faire was the original policy of government towards the industrial relations process. With the absence of any government regulation, the bargaining parties were free to determine whatever units they desired and the extent of their scope. Such determination would be subject to change at the discretion of the parties themselves. Despite current regulation and rules, the parties still have a fair amount of leeway to form actual bargaining units which may differ from board-determined units.

A variation of this policy was perhaps the moving spirit behind the Wagner Act in the U.S. That is, to limit government intervention in industrial relations to the establishment of relatively equal bargaining power between unions and management and then permitting the parties to

do whatever they might agree upon. As mentioned above, the NLRB does not feel that equalizing bargaining power is its function, although this approach was implicit in the Wagner Act.⁸ Nevertheless, the NLRB implements this policy through unit determination and prohibition of certain practices that might give one party or the other an advantage in bargaining power. In unit determination, it would call for criteria that would evaluate and concentrate on equalizing bargaining power.

Because of differences in political structures between Canada and the United States, the laissez-faire objective would be easier to attain in the United States. Also, the parties in the United States would have a greater degree of freedom than in Canada to change the dimensions of bargaining units. The political obstacles to laissez-faire in Canada are discussed in other parts of this study.

2. Maximum Industrial Freedom of Choice

Closely related to the concept of laissez-faire is the objective of maximizing industrial freedom of choice. Although laissez-faire imposes no restrictions on the parties, it does not necessarily lead toward the achievement of the above objective. A certain amount of government intervention may be necessary to accomplish this end. Legislation giving special voting and bargaining unit rights to certain groups of employees is an example of legal

support of this objective. It should be pointed out that too much legislative emphasis on individual choice could lead to a chaotic splintering of the work force. If carried to an extreme, it might lead to an intolerable amount of instability in industrial relations.

A more restricted variation of this objective would be giving a considerable freedom of choice of unions to groups of employees seeking a bargaining agent. This would be feasible where coupled with legislation similar to the United States Landrum-Griffin Act, which could help insure that unions democratically represent their constituents. It should be noted, however, that freedom of choice of a union may not mean freedom of choice to the workers involved unless the union is run democratically.

3. Stabilization of Collective Bargaining Relationships

A stable continuous bargaining relationship may permit the development of a mature attitude of the parties toward one another. The result may be a better understanding by both of the interdependence of their respective interests and perhaps as a by-product of this fewer strikes may follow. The drawback of pursuing stability as an objective is the ever-changing nature of industry. In a dynamic economy confronted with an ever-increasing rate of technological change and innovation, jobs will change,

companies will change, new products and techniques will be developed; as a result, bargaining units need to adapt. Over-emphasis on the existing bargaining structures creates rigidities and precludes adaptation to new conditions.

4. Minimize Disturbance of Existing Institutions

Sole pursuit of this objective would tend to restrict the types of changes and innovations created by a dynamic economy. This policy assumes that existing institutions are the best possible ones, which may not necessarily be true. Criteria applied by the boards for determination of appropriate bargaining units would perpetuate the existing organizational arrangements and boundaries of employers and unions.

In determination of bargaining units the boards should have to consider the impact of their decisions upon existing institutions. A failure to take into account this factor could do great social harm.

5. Maximization of National Economic Performance

Achievement of this objective can be measured by many possible indices of economic activity; particularly, growth of the economy, reasonable freedom from extreme business-cycle movements, and reasonable stability of price levels--especially in relation to similar movements in other economies. This objective is rarely stated in legislation,

although Section 1 of the Wagner Act clearly states that such a problem is a proper concern of that legislation:

.....inequality of bargaining power.....substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions.....

A country such as Canada must be continually aware of its competitive position in world trade. Maintenance of a satisfactory competitive position will depend upon continuing growth in productivity and in maintaining competitive costs and prices. Bargaining unit criteria must be cognizant of these problems and of the impact that such decisions have upon the economy.

6. Protection of the Public Interest

Advocates of this principle as an objective of public policy in industrial relations are primarily concerned with two related problems. One is to insure the continued supply of what are considered as socially essential services. This attitude accounts for special laws outlawing strikes by policemen, firemen, school teachers, etc. Obviously there is a considerable difference of opinion concerning which services are really essential. Most people would agree on policemen, firemen, and certain health employees. Beyond that point, the debate is unresolved. The second problem concerns the injury (real or imagined) and/or inconvenience involved

in significant cases of industrial strife. Some of this attitude is motivated by particular narrow selfish interests; other by a real concern with the economic impact of prolonged strikes in major industries. The data is lacking that would enable a determination as to where a real public injury begins or ends. While such injury is possible, it appears that legislative bodies have been as ready to respond to public "inconvenience" as to real public emergency.

Several possible social objectives of industrial relations policy have now been identified. They are not at all contradictory--several might be successfully pursued simultaneously. On the other hand, in some circumstances, actions which would lead to one might hinder or detract from another. If one is to evaluate the criteria which are or might be used by labour relations boards to determine "appropriate" bargaining units (particularly in the context where "appropriate" is defined as that which best leads to desired social objectives), it would be helpful if these several objectives could be ranked in importance--a difficult task based on the value judgement of the study participants, but one that must be confronted if this approach to "appropriateness" is adopted. Presently the ranking or evaluating of these objectives is dependent

on value judgements expressed by legislators and administrators of labour law.

A. Comments Regarding Objectives

Pure laissez-faire is no longer politically feasible as an objective because of increasing complexity and interdependence of an advanced economy. The role of government in industrial relations will more likely increase than decrease. Both Canada and the United States have a strong democratic heritage, and the principle of allowing considerable freedom of choice to individuals in selecting bargaining units has strong appeal. However, carried to an extreme the results would be disruptive to the industrial relations system.

Stability of bargaining relationships offers many advantages, but this objective must not be allowed to stand in the way of technological changes in production methods or product development. Stability should not be construed as implying permanent status to existing institutions. Flexibility of structures is essential if bargaining units are not to retard economic progress. The ability of the parties themselves, unions and management, to experiment by combining units, by bargaining over different issues at different levels, by changing the boundaries of units covered under contract, and by other

adjustments mutually agreed upon, should be encouraged.

It is possible to argue that the paramount objective of legislation in industrial relations is to promote the economic and social welfare of the country. National economies are becoming more interdependent. To grow in an increasingly competitive international economic system, a government must seek to act so as to promote economic progress.

Protection of the public interest is related to the advancement of the economic and social welfare of a nation. In practice, evidence seems to point to over-protectiveness of society rather than a lack of any protection. This approach focuses on the failures of collective bargaining and tends to overlook its positive gains. As a general rule, emergencies of the public interest can better be handled through legislation specifically concerned with strikes and emergency situations than through bargaining unit determinations.

In conclusion, the best way to balance these principles of legislation in industrial relations would be to provide a maximum amount of freedom to the parties involved where this freedom does not impair the national economic and social welfare. The administrative agencies charged with the responsibility for determining bargaining

units should have national objectives as a basis for developing specific criteria for "appropriateness." These national objectives should be spelled out as guiding principles of labour relations legislation.

IV. Criteria Employed in Determining Appropriate Bargaining Units

A. In the absence of legislative rules, labour boards in both Canada and the United States have developed criteria which they employ in making unit determinations.

In discussing the Canadian experience, A. W. R. Carrothers notes:

Some considerations which may be gleaned from published decisions are:

- (a) avoidance of confusion and dissatisfaction,
- (b) common duties, skills, wages and working conditions,
- (c) whether persons alleged to be supervisors use the "tools of the trade,"
- (d) substantial community of interest, by virtue of terms of employment, in collective bargaining for wages and hours,
- (e) equal treatment of employees with professional training,
- (f) maintenance of the status quo,
- (g) viability of the unit,
- (h) priority of application of competing unions,
- (i) transferability from one working unit to another,
- (j) custom and practice, or history of collective bargaining, or pattern of bargaining in the area,
- (k) avoidance of the "contract bar,"
- (l) wishes of the union,
- (m) permanence of the unit,
- (n) history of the union's pattern of applications for certification,
- (o) the fundamental coherence of the unit, and
- (p) opposition or absence of opposition by the employer or an incumbent union.⁹

In Labour Relations Legislation in Canada, published by the Canada Department of Labour in February 1967, it is reported:

.....all boards have developed general tests of appropriateness, including factors such as:

1. The wishes of the employees in choosing the unit.
2. The history of bargaining of the employees similar to those in the proposed unit.
3. The inclusion or exclusion of such employees in previous applications by the trade union involved.
4. The type of union organization (industrial, craft).
5. The community of interest of employees (plant, office, technical, professional).
6. The methods of pay and work organization.
7. The eligibility of employees for membership under the constitution of the applicant union.
8. The opposition--or lack of it--of the employer or another trade union to the proposed unit.¹⁰

In addition to the factors noted above, E. E. Herman's study¹¹ on the Determination of the Appropriate Bargaining Unit provides the following criteria:

- (1) The employers' administrative set-up, the organization and method of operation,.....the way that the unit fits into the company's organization..
- (2) Prior board decisions from which policy principles emerge concerning the establishment--or other establishment of the same employer or of identical, similar or analogous industries.

The criteria employed by the National Labor Relations Board in the United States are very similar to those employed by Boards in Canada. In the First Annual Report of the NLRB in 1936, the problem of determination

of appropriate bargaining units was discussed under the following headings: history of collective bargaining, skills of workers, functional coherence, mutual interests, wages, organization of employer's business, form of self-organization among employees, and eligibility to membership in labor organization. Chamberlain states, ".....the Board is generally guided by the parties.....First, the Board generally will confirm a unit upon which the union and management parties have already agreed. But second and equally important, the Board is influenced to a great extent by existing practices,....."¹² He further notes, "The Board has developed a number of criteria for determining the appropriate bargaining unit. Among the most important of these are the nature of the employees' organization; the history of their collective bargaining; the arrangements followed in other plants of the same employer, or by other employers in the same industry; the similarity of skill, wages, work and working conditions of the employees; the desires of the employees; the eligibility of employees for membership in the union or unions involved; the employer's administrative organization."¹³

In the 17th Annual Report of the NLRB in 1949, the USNLRB stated, "First and foremost is the principle

that mutuality of interest in wages, hours and working conditions is the prime determinant of whether a given group of employees constitute an appropriate unit..... In deciding whether the requisite mutuality exists, the Board looks to such factors as the duties, skills, and working conditions of the employees involved and especially to any existing bargaining history..... In relevant cases, the Board also considers the extent of organization, and the desires of employees where one of two units may be equally appropriate. Where the employees in more than one plant of an employer are involved, such factors as the extent of integration between plants, centralization of management and supervision, employee interchange, and the geographical location of the several plants, is also considered."¹⁴ The NLRB has also made clear that they will not establish bargaining units on the basis of race, nationality, or sex.¹⁵ In their 20th Report (1952), the Board, noting that the Act requires that they choose whether an employer unit, craft unit, plant unit, or subdivision thereof is appropriate, stated that "....the unit types listed in the statute as appropriate for bargaining purposes are presumptively appropriate, and should, other things being equal, prevail over other unit types not designated in the statute."¹⁶

B. Evaluation of Criteria

In both Canada and the United States, the criteria employed by labour relations boards can be grouped into three general categories. The first group of criteria is concerned with the institutional arrangements of the parties involved, such as membership rules of the union, the nature of the employer's administrative structure, and the history of union organization.

Another type of criteria focuses upon the nature of the work involved and would include such tests as community of interest of workers; interchangeability of employees; and common wage and employment practices.

Finally, there are criteria primarily involved in preserving freedom of choice to the participants and which include wishes of the employees; these criteria further take into consideration the bargaining history of the union(s) and employer(s) concerned with the decision.

The first two groups of criteria mentioned above have many constructive implications. Consideration of the nature of the work involved certainly tends to lead to homogenous groupings of workers, as would the criteria concerning common wage and employment practices. A homogenous group of workers leads to a workable bargaining relationship by narrowing the range of diverse interests

and issues of concern to both the union and the employer. Certifications granted on the basis of these criteria might encourage technological change or retard progress. Which effect results depends on the board's interpretation as to when a change in the nature of the job might be of substantial enough import to warrant a corresponding change in the bargaining unit.

Certifying a unit that ignores the administrative structure of the employer creates difficulties in administering the bargaining contracts. Criteria that ignore union organization and membership practices might well result in lack of representation for certain categories of workers or an ineffective voice for an important minority of the employees involved.

The last category of criteria are those involving the wishes of the parties and their past bargaining history. These come closest to meeting important principles of industrial relations legislation--that is, preserving a maximum amount of freedom for the parties without hindering the economic progress of the country. In fact, labour boards in both countries seem to have been following such practices for the majority of cases. If the parties involved agree upon a unit which seems to meet the tests of appropriateness and does not violate the

statutes involved, labour boards in both countries will accept that bargaining unit. The 28th Annual Report of the NLRB stated, "The appropriateness of a bargaining unit is primarily determined on the basis of the common employment interests of the group involved." In making unit determinations, the NLRB also has continued to give particular weight to any substantial bargaining history of the group.¹⁷ Such decisions give great weight to the preferences of the institutional bodies concerned and, providing the union is democratic, to the union members as well.

It should be pointed out, however, that the accumulation of decisions since the initial intervention of government in determining the bargaining unit affects the present relationships developing voluntarily between the parties. Labour board decisions tend to establish or reinforce customary practices. The parties will apply for a unit that has the greatest probability of being certified, basing the content of their applications on past labour board decisions and practices. Also, the earlier decision might favour a certain union or type of union. That union will be in a better position to organize in the future, and therefore have an advantage over other unions not similarly benefitted by past decisions.

Past bargaining history retains whatever relationships the parties previously established and avoids the kinds of wrenching adjustments that would be involved if a different unit were established. Care must be exercised that the use of the criteria of historical practices and the wishes of the parties do not so entrench certain groups or methods of operations that technological change is retarded and economic progress slowed. The point has been made that historical decisions tend to influence future choices. Except for this phenomenon, which seems unavoidable under any criteria, the approach of using historical practices and especially the wishes of the parties would tend to approximate the types of units that would be present in the absence of government intervention in unit determination.

V. Conclusions and Recommendations

The objectives discussed in this chapter are pursued simultaneously in a pluralistic society. Criteria can be developed to achieve these various objectives, but an overemphasis of one can be controversial in its impact. For example, relying on complete freedom of employee choice might maximize the democratic aspects of bargaining while so splintering units as to increase industrial strife. Criteria to determine the "appropriate" bargaining

unit must be those that best accomplish the objectives of the industrial relations process. An evaluation of the criteria employed will be dependent on a value judgement as to which interests are to be furthered or what objectives are to be accomplished.

It is recommended that Canadian labour boards certify bargaining units as much as possible in accordance with the wishes of the parties involved, without losing sight of national objectives. To promote flexibility in accommodating change in technology or economic conditions affecting unions and management, the boards must continually review requested changes in the certified unit. Some degree of bargaining stability can be assured with reasonable time or contract bar rules. As Woods stated, "It is therefore the task of public policy to decide between the claims of stability and of the democratic right of the represented employees to express their dissatisfaction with the bargaining representatives. Certification and the 'contract bar' principle guarantee to the incumbent union the sole right for a period of time. But the right of employees, at specified statutory times, to rid themselves of the bargaining agent by withdrawing support or by transferring support to another union, preserves democratic control, at least in form, and, to a considerable degree, in fact."¹⁸

FOOTNOTES

1. "The Relationship Between Law and Policy," A. W. R. Carrothers, Paper delivered to the Task Force Research Staff Meeting, June 4, 1967.
2. It is interesting to note that, in spite of the principle of equality of bargaining power contained in the Wagner Act, the NLRB in the Continental Baking Co. case state, "We do not believe that....the inference is warranted that Congress intended that the Board should consider the power factor in unit determination." Continental Baking Co., 99 NLRB 123, contained in the 17th Annual Report of the NLRB, p. 57.
3. Section 9 (b) of the National Labor Relations Act, "Representatives and Elections."
4. The Industrial Relations and Disputes Investigation Act is hereinafter referred to as the "IRDI Act."
5. Section 2 (1).
6. Section 2 (1) (c).
7. Section 2 (3).
8. "The inequality of bargaining power....tends to aggravate recurrent business depressions.....by preventing the stabilization of competitive wage rates and working conditions....(Section 1).
9. Collective Bargaining Law in Canada, Toronto: Butterworth, 1965, pp. 234-5. Carrothers cites cases where each rule was applied; these have been omitted above.
10. Pp. 20-21.
11. E. E. Herman, "Determination of the Appropriate Bargaining Unit," Canada Department of Labour, Ottawa, 1966, p. 13.
12. Collective Bargaining, New York, McGraw-Hill, 1951, p. 197.
13. Ibid., p. 198.

14. 17th Annual Report of the National Labor Relations Board, pp. 56-7.
15. J. A. Simplet Co., 100 NLRB 771.
16. Beaumont Forging Company, 110 NLRB 2200.
17. Fiscal Year ending June 30, 1963, p. 51.
18. Woods, H. D., and Ostry, S., Labour Policy and Labour Economics in Canada (Toronto: MacMillan, 1962), pp. 127-28.

CHAPTER IV

The Law and the Bargaining Unit in Canada

Introduction

A critical evaluation of the Canadian labour relations law as it affects the evolution of bargaining units, and suggestions for some changes, are the topics of this chapter. The major subjects covered are: the jurisdiction and power of labour relations boards, and compulsory conciliation legislation and its impact on the bargaining unit.

An analysis of the legislative field is usually proceeded by the history and development of the law responsible for the existing legislation. Since Task Force project number eight seems to cover this area, there is no point in repeating the whole historical background here. Instead, the major emphasis is directed to the evaluation, and possible reform, of existing legislation.

As a framework of analysis for this approach, a number of questions proposed by A. W. K. Carrothers are posed. Answers to these questions are attempted under joint or separate headings in the sequence in which they are listed below.

- "1. What is the law?
2. What are the criticisms of the law?
3. Are they valid, or in what respects are they valid?
4. What are the choices of change to meet criticisms?
5. Which solution is the best?
6. Is it worth the cost?"¹

a. What is the Law?

Canada has eleven labour relations boards, ten provincial and one federal. The jurisdiction of each provincial board

extends to all industries within the boundaries of that province. It does not include, however, the industries under the jurisdiction of the federal board. The authority of the federal board extends to industries and enterprises listed in Section 53 of the Industrial Relations and Disputes Investigation Act², or to those industries which, according to various court decisions, now come under the authority of the board.

The allocation of jurisdiction between the federal board and the provincial tribunals can be traced to the British North America Act of 1867. Section 91 of the Act lists the powers vested with the federal government, and Section 92 those of the provinces. There is no reference to labour relations in these sections. The division of jurisdiction in this area has been determined by a decision of the Judicial Committee of the Privy Council in the Snider Case in 1925.³ Woods states that "the basis for some future balkanization of Canadian labour relations policy was solidly established in the 1925 decision. The Dominion was left with a limited jurisdiction with not much potentiality for growth. The major jurisdiction went to the provinces. Prior to this decision in 1925, there was a presumption that the Dominion Parliament had jurisdiction."⁴

The powers and area of jurisdiction of the boards are not only determined by the B.N.A. Act but also by the authority vested with the boards by the provincial or federal legislatures. This authority varies considerably among the different boards. A complete list of the responsibilities and areas of authority of the Canadian boards can only be obtained by a careful study of the acts governing their activities. In some jurisdictions, the responsibilities of the boards are confined to issues involvin

labour-management relations. In others, the boards "become involved in the application of social-policy matters not normally included in the scope of policy relating to collective bargaining. This is particularly true in Alberta where a single act of the legislature, the Alberta Labour Act, covers most of the issues which are found in several pieces of legislation in the other jurisdictions."⁵ However, within the context of this chapter, the major interest in the boards' legislative authority concerns the scope of their jurisdiction and its implications on the natural process of evolution of bargaining units.

Canada's entry into the certification arena was patterned on the United States' Wagner Act. The labour relations law of Canada, however, contains one additional element that was not present in the United States' law, namely, compulsory conciliation.

In the immediate years following World War II, the federal and most of the provincial labour relations acts in Canada stipulated that neither a strike vote nor a strike may take place unless a two-stage conciliation machinery was put into motion; stage one being the conciliation officer, stage two a conciliation board.⁶

The extent of compulsion in the utilization of the conciliation machinery varies considerably among the various jurisdictions. In the east, Saskatchewan was given as an example of minimum compulsion and Alberta as maximum.⁷ But this is rapidly changing as many jurisdictions are trying to amend the law

and get away from forcing the parties to accept conciliation. In the last two years, the provinces of Nova Scotia, New Brunswick, Manitoba, and Quebec began experimenting with legislation, attempting to minimize government intervention.⁶ Hopefully, the other jurisdictions will eventually follow suit.

b. What are the Criticisms of the Law and are They Valid?

The present Canadian labour relations law, particularly in the area of certification of bargaining units and conciliation services, can be criticized on the following grounds:

- (a) The law does not provide for a tribunal with industrial relations powers over all inter-provincial industries, particularly a tribunal with authority to certify interprovincial, multi-location, multi-plant, and multi-employer bargaining units in industries under provincial jurisdiction.
- (b) Compulsory conciliation provisions in labour relations acts restrict the development of interprovincial bargaining units.
- (c) Criticisms of legislation regarding multi-employer and craft certification are presented in the chapters analyzing multi-employer and craft bargaining units.

The absence of a tribunal with the powers to certify interprovincial multi-location units for industries under provincial jurisdictions may be an obstacle in the elimination of industrial relations conflict revolving around the issue of interprovincial bargaining units.

An illustration of this is the 1960 strike at the Dominion Bridge Company. The company has plants in Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, and Alberta. In each of these plants the company negotiates a separate agreement with the United Steel Workers of America, and the employees at each of these plants are certified on a single - location basis by the Labour Relations Board concerned. In 1960 the union tried to obtain a master agreement covering all plants where it held bargaining rights in order to negotiate on a national basis. The company, however, was opposed to bargaining on a national scale on the grounds that the employees at each plant were responsible for their performance as a local group that had to be free to bargain locally in the light of local economic factors.⁹ However, the validity of this argument is debatable, since bargaining on a national scale or by multi-plant units is possible, and takes place in industries such as cement or can manufacturing, with special consideration being given to local conditions and geographical wage differentials. In the Dominion Bridge case, the parties could not settle their differences and a strike came into effect.

Had there been a tribunal with the powers to certify an inter-provincial multi-plant unit, this strike could possibly have been averted, for such a tribunal could have determined whether an interprovincial multi-plant unit or individual plant units were appropriate for certification and bargaining. A tribunal having authority over companies that operate plants on an interprovincial basis could be effective in dealing with large-scale industrial conflicts.

The absence of centralization in industrial relations, particularly of a tribunal with broad interprovincial powers, is also a deterrent to the natural evolution of bargaining units into larger interprovincial units which would emerge as a result of the work of the dynamic forces of the economy. These forces were discussed at some length in the chapters pertaining to The Dynamic Forces and the Bargaining Unit.

What proof is there that a tribunal with interprovincial certification powers over industrial relations in all interprovincial firms would contribute to the growth of interprovincial bargaining units? Some labour relations board officers would probably claim that the present certification authority among eleven jurisdictions does not prevent the emergency of interprovincial multi-plant or multi-employer bargaining units. They would probably point to such industries as canning, cement, or tobacco, where interprovincial actual bargaining units do exist.¹⁰

Because of scarcity of research data, the only proof one can offer that a tribunal with interprovincial authority would probably better reflect the dynamic forces in the economy are the developments in the United States. A trend towards centralization of bargaining units can be detected south of the border. Reasons given for this trend are:

- (1) Expanding technology and better transportation services which enlarge the area of competition.
- (2) Interdependence of local markets through wage standardization programs, corporate-wide contracts with large firms operating in different markets, better coordination in union bargaining, and

simultaneous presentation of both local and national demands.¹¹

Undoubtedly, the same forces are at work in Canada, but no trend towards centralization seems to be present. There is an absence of growth in the number of interprovincial units in recent years. Most of the interprovincial units presently active have a long history of operation.

Probably the major reason for the difference in trends between Canada and the U.S. is the difference in the legal ^[industrial] relations framework, particularly the broad jurisdictional authority of the NLRB and the absence of compulsory conciliation in the U.S. as contrasted with the opposite state of affairs in Canada.

The present jurisdictional division of industrial relations authority among eleven boards means that Canadian companies under provincial jurisdiction bargaining on an interprovincial level can only avail themselves of conciliation services on a fractionalized basis.

As indicated earlier, until very recently most labour relations acts contained compulsory conciliation provisions. These conditions most likely restricted the development of inter provincial bargaining units. Essentially, the law implied that a company or group of companies bargaining on an interprovincial level would be covered by different provincial statutes and subject to different conciliation procedures even though their industrial relations decisions and the collective bargaining process were centralized in one location. In the past, some of the provinces, to prevent useless duplication of conciliation services, attempted to circumvent the compulsory

conciliation law by permitting one province to form a conciliation board to cover the firm's plants in the other provinces.

Such conciliation agreements were made in 1946, 1958, 1960, and 1962, between British Columbia and Alberta for the United Mine Workers of America, District 18; the Coal Operators' Association of Western Canada, Calgary, Alta.; Coleman Collieries Ltd., Canmore, Alta.; and Crow's Nest Pass Coal Co. Ltd., Fernie, B.C. In these disputes, the Alberta Minister of Labour would appoint a Conciliation Commissioner whose appointment would usually be reconfirmed by the British Columbia Minister of Labour and, in effect, the Commissioner would be authorized to conciliate the dispute on an interprovincial basis, rather than to confine himself to the boundaries of one province.¹²

Still, despite such arrangements, the division of jurisdiction probably contributed to undue delays where a union attempted to strike in a few plants located in different provinces.

The implementation of the above mentioned arrangements would be quite difficult in a large national company, a meat packer for instance, with plants in many jurisdictions, Woods states that in this industry "the parties may be required to conform to seven or eight conflicting patterns of conciliation requirements running over a period of months."¹³ Woods further expresses the view that "a policy that does violence to the administratively sound bargaining unit is not itself sound."

A good illustration of problems related to the division of labour relations jurisdictions in Canada is provided by F. R. Scott¹⁴ and relates to the 1947 strike in the packing industry.

In 1944 the three major firms in the industry--Canada Packers, Burns, and Swift Canadian--began national bargaining with the United Packinghouse Workers of America. All negotiations were centralized in Toronto. Until 1947 the industry was under federal authority and "federal conciliation had kept the peace till 1947."¹⁵ In May of that year the provinces took over. This implied that interprovincial strike action could not take place without autonomous conciliation process in each province, which would involve the formation of independent conciliation boards conciliating the same issues and submitting separate reports to their respective departments of labour. This state of affairs is "a legal absurdity".¹⁶

In 1947, when the negotiations between the three companies and the union broke down, the union disregarded the provincial statutes regulating conciliation and strikes and decided to strike. In this particular case the existing legislation led to an illegal strike in most of the provinces. Scott¹⁷ expressed the view that "had federal authority existed, there would have been no strike, since the employers would have realized that the union could easily legalize the strike action which was thought to be impossible in the face of the provincial barriers."

During the strike the provinces attempted to join ranks in order to settle the dispute. A meeting of the representatives of the provincial departments of labour took place in Toronto.¹⁸ The conference did not produce any results, the participants could not even agree on the appointment of a common conciliator. Finally, the strike was resolved without any assistance from the provincial authorities. The strike "might not have occurred, and will be

less likely to occur in the future in this or other big industries if jurisdiction had kept pace with us, or is brought into line with the facts."¹⁹

To summarize, the existence of eleven boards and compulsory conciliation retards the development of interprovincial bargaining units in Canada. Some encouraging developments took place during the last few years. The provinces of Nova Scotia, New Brunswick, Manitoba, and Quebec amended their compulsory conciliation provisions to provide for less government intervention in the area of conciliation. If this is an indication of things to come, then compulsory conciliation would lose its significance in the shaping of the dimensions of bargaining units in Canada.

c. What Are the Choices of Change to Meet Criticism, and Which Solution is the Best?

A relatively easy remedy for the dismissal of criticism levelled against the effects of compulsory conciliation provisions on the development of bargaining units is to remove these from all Canadian labour relations acts.

The object of these provisions is supposedly to assist the parties in dispute settlement. The effectiveness of these measures, however is highly questionable. There are many arguments that could be forwarded against compulsory conciliation, but this would be going beyond the objectives of this work.

Solutions for the difficulties emanating from compulsory conciliation are relatively easy to suggest, as compared with the need for answers to the complex problems arising from the division of jurisdiction among eleven labour relations boards.

The present balkanized allocation of industrial relations authority in Canada, as pointed out, deters the development of interprovincial bargaining units.

One theoretical alternative to the existing system would be to transfer the authority over companies with interprovincial industrial relations interests to the federal or some other form of national jurisdiction. Cox²⁰ gives the following justification for a national labour law.

(A) Some firms have a very significant impact on the economy, therefore their labour relations are of national concern. Basic steel and automobile assembly plants are examples of such firms.

(B) National labour relations law would restrain competition established upon variation in legislation among the different jurisdictions. Variations in statutes and their interpretation by administrative tribunals can contribute to competitive advantages of firms located in jurisdictions that are hostile to labour unions. Location of new industries and the migration of established firms may be influenced by the legislative environment.

(C) Although the following statement pertains to the United States, it is also applicable to Canada. Cox states that "Often the balance of convenience from the viewpoint of the people affected also lies on the side of national control. The best illustration is a bargaining unit composed of several plants in different states. Collective bargaining is complicated and confused if the duties resting on the employer and union are different on each side of the state line; if some provisions of the

contract are valid and enforceable in one state and illegal or ineffective in the other; or if one state permits half the employees in the unit to strike while the other persists in taking a prior strike vote or in outlawing familiar labor objectives....Similarly where authority within the union is centralized in the International, it benefits from having to deal with only one set of laws."²¹

(D) National labour legislation may also be encouraged as a method of extending the advantages of collective bargaining and "spreading the benefits of a sound labour policy".²²

The law as it presently stands "tends to lawlessness".²³ The existing allocation of industrial relations jurisdiction interferes with the ability of the unions to strike in inter-provincial firms. Scott²⁴ expressed the view that "Strong unions faced with a choice of either accepting poor agreements or striking regardless of the confused law will from time to time choose the latter course; if their leaders do not, wildcat strikes are likely to break out."

Scott²⁵ also states that decentralization is conducive to "sudden swings of opinion" which may express itself in substantial changes in legislation. These swings are more common and violent "on the provincial than on the federal level". Illustration of this is "the anti-labour legislation of Prince Edward Island in 1948, in British Columbia and Newfoundland in 1959."

For every argument favoring national labour legislation a counter-argument can be found favoring decentralization. In the final analysis, a value judgment has to be made as to the significance of the various factors. Cox presents the following reasons for divided jurisdiction.

- (a) Labour relations cases are processed faster by local agencies than by the national board.
- (b) Local agencies are more familiar with local conditions and the circumstances of each case. In view of this they are in a better position to "reach wise decisions".²⁶
- (c) Decentralization furthers "local experimentation"; it also may serve "as a laboratory for testing progressive measures".²⁷
- (d) Lastly, decentralization implies local responsibility and this brings us closer to the "ideal of self-determination".²⁸

An examination of the preceding arguments and problems related to divided industrial relations jurisdiction seems to lead to the conclusion that in some industries, particularly those composed of small local firms, provincial autonomy should be protected. However, firms with interprovincial industrial relations interest should be covered by national legislation.

The proposed division of jurisdiction brings up the issue of criteria for subjecting a firm to provincial or national law.

In the United States the National Labor Relations Board²⁹ assumes jurisdiction on the basis of a firm's volume of sales or purchases; for instance, a manufacturer importing \$50,000 would come under the authority of the NLRB.

As contrasted with Canada, very little industrial relations authority has been left to local control in the United States. However, the NLRB method of assuming jurisdiction according to the dollar size of a business does not seem to take sufficiently into consideration the characteristics of various firms. Different industries may be affected in different ways by the division of industrial relations legislation "without much regard to the size of the business units."³⁰

It is not suggested that Canada should follow the United States' experience of placing firms under national labour law on the basis of volume of sales. Instead, the proposed criteria for a firm to be subject to national labour relations legislation could be as follows:

(a) The geographic scope of a firm's operations could be one criterion. If a firm has substantial manufacturing, construction, mining or chain store operations in more than one province it could be subject to national legislation.

(b) Another criterion could be interprovincial industrial relations interests of companies operating only in one province. Such firms could be covered by national legislation when members of an interprovincial multi-employer bargaining unit.

To apply the above mentioned criteria for the transfer of firms from provincial to national jurisdiction brings up many questions of law. There are a number of alternative ways for the accomplishment of the transfer. One possibility would be to place industrial disputes under Section 91 of the BIA act which covers only subjects under the exclusive legislative authority of the Parliament of Canada.³¹ This avenue of action

was adopted in the case of unemployment insurance which was placed as item 2a in Section 91 of the BIA act in 1910.

The procedure in this case was that, following a consent of all Canadian provinces, the amendment was first enacted by the Parliament of the United Kingdom, and then **by** the Canadian Parliament.

Scott ³² suggests that the following words could be added to Section 91 as a means of expanding federal jurisdiction: "Labour relations in such industries and services as are declared by the Parliament of Canada to be of national interest and importance." The problem with this solution is that presently it may be impossible to obtain the consent of all the provinces for such an amendment.

Another possibility for the transfer of some labour relations to national jurisdiction would be for the Parliament of Canada to declare some industries "to be for the general advantage of Canada or of two or more of the provinces."³³ Such declaration would place the industry under federal jurisdiction. One problem with such solutions is that an industry may be composed of very large and very small firms. Whereas a case could be made for placing the large interprovincial firms under interprovincial authority, no such case could be made for the very small local firms. Another problem is that a declaration by the Parliament of Canada "takes over much more than the labour relations of the industry and this it may well not wish to do."³⁴

Still another possibility would be to place industrial relations among concurrent powers. Under such a system, both the federal and provincial legislatures may assume authority; however, in case of dispute as to which law will prevail, the federal

statutes are supreme. The legislative authority of the provinces is confined to area not claimed by the federal legislature.

Immigration and agriculture are concurrent powers listed in Section 95 of the BNA act. The most recent addition to this area was old age pension which was introduced with the consent of all the provinces in 1951.

A very good evaluation of the concurrent power approach to industrial relations is provided by Archibald Cox.³⁵ He states that there is some justification for local control,³⁶ nevertheless, on the basis of U.S. experience, he prefers exclusive over concurrent powers for the following reasons:

- (1) There would be interference with collective bargaining as "envisaged by national law if the states are permitted to impose additional obligations upon employees and labour unions."³⁷
- (2) In some cases it would be too difficult to make a distinction between concurrent local laws which affect the implementation and purposes of national law. Decisions on these matters could lead to lengthy litigation, meanwhile the parties "would be left to build a highly delicate relationship upon shifting sands."³⁸
- (3) The operation of local labour statutes affecting industries subject to national law "would destroy the uniformity and convenience which are part of the justification for federal legislation."³⁹
- (4) Such systems could encourage interprovincial competition "in deciding cases and writing statutes most attractive to the migration of industry."⁴⁰

- (5) Labour legislation "lacks the degree of precision which is necessary before anyone can say whether the Provincial and national policies are in fact the same. Too much administrative discretion is required"⁴¹ which would lead to many different interpretations.

Still another course of action for the expansion of national authority would be for the common law provinces to assign to the Parliament of Canada the field of labour relations. They could do it under Section 94 of the BNA Act which permits these provinces to convey to the federal legislature any subject relative to "property and civil rights....where labour relations belongs."⁴²

In the past, some of the smaller provinces expressed an interest in such transfer of authority. The same cannot be said for the larger provinces, and Quebec does not have the constitutional authority "to make a cession under Section 94."⁴³ In view of some of these attitudes and constitutional limitations, this route cannot be suggested as a means of overcoming the problems of a divided Canadian jurisdiction.

The courts would be still another road through which we could travel towards centralization of industrial relations. The 1925 *Snider* case decision by the Judicial Committee of the Privy Council is frequently quoted as a stumbling block in the expansion of federal jurisdiction. Undoubtedly this is true, but as Scott rightly points out, all that the case decided was "that the IDI Act could not apply to municipal institutions. The wider language used by the Lord Haldane was beside the point at issue."⁴⁴

Following the Snider case of 1925, the IDI Act was amended in that same year. The revised act was applicable to all firms federally incorporated, and "to disputes declared to be subject to the act by reason of a national emergency."⁴⁵ These provisions do not appear in the IRDI Act. If they did, the jurisdiction of the federal authorities would have been much broader than the case is now. This brings up an interesting question. If the Parliament of Canada amended the IRDI Act to make its application correspond with the 1925 revised IDI Act, would the Supreme Court uphold such an amendment? Scott does not bar "the possibility of some judicial rethinking in the future, particularly with respect to the 'trade and commerce' and the 'peace, order, and good government' clauses of the Constitution... but the obstacles to overcome are considerable."⁴⁶

In the fifties the courts reached a number of decisions which implied that they favor broader federal jurisdiction. In 1956 an Ontario judge sustained the application of the IRDI Act to uranium mines and concentrating plants.⁴⁷ In 1955 the Supreme Court, in a reference, upheld the IRDI Act and Judge Rand made the following statement: "Labour agreements embodying new conceptions of contractual arrangements are now generally of nation-wide application, and, as we know, strike action may become immediately effective throughout the systems."⁴⁸ Although the reference here was to the Railway industry, the implications are on a much broader scale.

Before the courts can start interpreting, on a large scale, claims of the federal authority towards broader jurisdiction first such claims would have to be made. Scott⁴⁹ suggests three ways this could be done. "(1) new federal legislation,

(ii) a constitutional reference framed to elicit opinions about federal authority over labour relations in interprovincial industries, or (iii) a daring lawsuit challenging the jurisdiction of some provincial board in a dispute arising in some major industry."

A major drawback of the solutions discussed so far is not the legal difficulties which would be encountered in any attempts to amend the law, although these would be formidable, the real problem would be to obtain the consent of the provinces in such an endeavor. To gain such support, it would be necessary, apart from pointing out the resultant benefits to Canada and the provincial jurisdictions, to give the provinces some participation in the centralization process. Any movement towards uniformity of labour relations law would have to be based on co-operation between the federal and provincial authorities. Present legislation provides for such co-operation: Section 62 of the IRDI Act stipulates that in instances where the provincial legislation is substantially the same as the federal statute, the federal "Minister of Labour, may on behalf of the Government of Canada...enter into an agreement with the government of the province to provide for the administration by officers and employees of Canada of the provincial legislation." Although variations in wording are considerable, similar provisions can be found in the acts of Newfoundland,⁵⁰ Nova Scotia,⁵¹ New Brunswick,⁵² Manitoba,⁵³ Saskatchewan,⁵⁴ Alberta,⁵⁵ and British Columbia.⁵⁶ There are no such provisions in the statutes of Quebec, Ontario, and Prince Edward Island. At the one end of the legislative spectrum there is Section 36 of the Saskatchewan Act which permits the application of the IRDI Act to the province,

following an order by the Lieutenant Governor in Council; on the other end there are the Alberta and Saskatchewan Acts which provide for the application of the federal law to coal mining and meat packing after an appropriate regulation has been issued by the Lieutenant Governor in Council. The other provinces with legislative provisions for provincial-federal co-operation only agree to the federal administration of provincial statutes.

The federal and provincial statutes in their present form would not be very helpful in furthering the cause of centralization of labour relations law. Assuming, hypothetically, that British Columbia and Alberta would make the IRDI Act applicable to meat packing in their respective provinces, it is very questionable whether this would permit the CLRB the certification of an interprovincial unit in this industry. In order to have some interprovincial certifications, amendments of existing legislation would be necessary. However, the presence of the various provisions for federal-provincial co-operation seems to imply that it would be constitutionally possible to amend the various statutes and provide for more provincial-federal co-ordination in the industrial relations area.

Specifically, it is suggested that the law be amended to permit the formation of a centralized labour relations board in charge of firms with interprovincial industrial relations interests. This brings up the following questions:

- (1) Firstly, what should be the role of the federal government and the provinces in such a tribunal?
- (2) Secondly, what would be the legal considerations in the establishment of such a body?

(3) Thirdly, what are the realities of the situation?

Regarding the first point, an effort could be made to extend the authority of the CLRB and to have it serve as the proposed centralized tribunal. Legally, this could be attempted in a number of ways; (a) by declaration of the federal parliament that some industries are for the general advantage of Canada, (b) through test court cases, (c) through amendments of the BNA Act, or (d) through enactment of provincial enabling legislation. It is very unlikely that the provinces would be willing to support the latter two courses of action, thus the power of the CLRB could be extended either by a declaration of the Parliament of Canada--the drawback of this solution has already been observed--or through court cases.

The court case approach may be useful in testing a particular law or the extent of federal jurisdiction, but it is doubtful whether it could lead to centralization of industrial relations based on the application of criteria previously submitted. Even if a court were very favourably disposed towards centralization of industrial relations, it would still be extremely difficult to transfer, on a large scale, authority from provincial to federal authority. Over the years the provinces build up too much vested interest in this area for the courts to take it away.

It seems that the only way to create a centralized board is to solicit the participation of the provinces, and this would rule out the CLRB as a candidate for this position. In view of recent developments, there is too much resentment of the CLRB by Quebec to make this tribunal a useful institution.

One alternative which could be considered is for the provinces to bypass federal authorities, combine forces, and form an interprovincial board in charge of companies with interprovincial industrial relations interests. Apart from the fact that the existence of such a tribunal would lead to costly duplication of some of the functions which the CLRB could provide, it could also create serious constitutional problems. Although Section 83 of the British Columbia Labour Relations Act stipulates that "the Lieutenant-Governor in Council may make regulations providing for co-operation...with any other province," if all provinces enacted similar provisions and on this basis formed a centralized tribunal, it is very questionable whether the courts would uphold this section. A province can delegate authority over its jurisdiction to a federal body, but it is doubtful whether a province could constitutionally delegate industrial relations authority within provincial boundaries to a central tribunal, created jointly with other provinces and independent of the federal government.

Another solution which probably has a better possibility of legal approval would be either the reorganization of the CLRB or the formation of a new body on which both the provinces and the federal government would be represented. This could probably be accomplished by a new federal labour relations act providing for the formation of such a board. The wording of the act would be formulated jointly with all the provinces. The act would have to stipulate that all the provinces be represented on the new tribunal. The transfer of legislative industrial relations authority from the provinces to the federal body could be achieved through enabling legislation in

provincial statutes, similar to developments during World War II.

Such a tribunal, established by the Federal Act, could consist of one national board and ten regional boards, similar to World War II arrangements. The composition of the new boards could be as follows:

- (1) Each regional board to be composed of six members
 - (a) Three members appointed by the federal government and three by the province in which the board is located.
 - (b) Two of the members to represent labour, two management, and two neutrals representing the public interest.
 - (c) One member of each category to be appointed by the province in question, and one in each by the Federal Government.
 - (d) The members would elect among themselves a board chairman.
- (2) The members of the ten regional boards to be responsible for the nominations and appointments of members to the national board.
 - (a) The national board to consist of ten members, representing all ten provinces.
 - (b) The chairman of the national board to be elected from within the ten members of the board.

The jurisdiction of the national board could extend to all firms with interprovincial industrial relations interests and also to firms presently under the authority of the CLRB. The regional boards could act as branches of the national

board. The decisions of the regional boards could be final except in the following areas:

- (a) In cases affecting existing interprovincial units;
- (b) In cases regarding interprovincial versus intraprovincial bargaining units.

In such situations the board's decisions could be subject to review and final determination by the national board.

The jurisdiction of each regional board could either be confined to firms with interprovincial industrial relations interests, or extend to all the firms within a province. This arrangement could be very flexible. In some provinces the regional boards could assume authority over total labour relations, if so requested by the provincial authorities, but in others they would restrict themselves only to firms and industries with interprovincial industrial relations interests.

A province, by delegating the authority over labour relations to the regional board, would prevent costly repetition, of services and provide uniformity of labour relations law to all the workers in the province.

In considering the formation of a national tribunal, the following things should be taken into consideration: Firstly, as pointed out in the chapters dealing with multi-employer bargaining units and the dynamic forces in the economy, the trend seems to be towards larger bargaining units and provincial authorities should attempt to recognize it and deal with it rather than burying their heads in the sand. Secondly, the existence of eleven labour relations boards instead of a national board means that there are no legal instruments for

the resolution of conflict over the scope of bargaining units in situations like the Dominion Bridge Company case discussed earlier.

If the purpose of public policy is to minimize interference into the natural evolution of bargaining units, as board officers in the various jurisdictions seem to claim,⁵⁷ then the formation of a tribunal responsible for all interprovincial bargaining units would be a step toward the **achievement** of this objective.

To continue having eleven boards implies eleven different practices and philosophies as to the appropriateness of bargaining units. This means that in the same company, in the same type of plant, distinct certified bargaining units emerge when the company operates in more than one province and thus is subjected to the authority of a few labour relations boards. Obviously, in some cases, this would be a deterrent to the expansion of bargaining units.

The following hypothetical example illustrates this point: Company W has two identical plants, one in province A and one in province B. In both provinces unions X and Y are attempting to gain representation rights. In province A the board decides that the unit should consist only of production employees and union X obtains the necessary majority. In province B the board decides that an appropriate bargaining unit should not only embrace production workers, but also skilled, maintenance, and clerical employees, and union Y is certified as bargaining agent. Let us further assume that if the board in province B determined the same bargaining unit as the board in province A, the same union, X, would have gained certification in both

plants. Clearly, in a case like this, the chances of the two certified units in the two provinces merging into one actual bargaining unit are more remote than they would be in a case where the same union would represent the employees of the two plants. On the basis of available data, it is impossible to estimate how common such situations are in reality, but most probably they do exist.

To conclude, the proposal for action consists of a two-phase approach which is a synthesis of the two alternatives outlined in this chapter.

The first phase would be the elimination of compulsory conciliation provisions from labour relations act. Phase two would be the formation of national and regional boards composed of both federal and provincial authorities. If the current trend of removing compulsory conciliation from labour relations acts will continue, we may see the implementation of the first phase in the near future. The second phase may be much more difficult to introduce, and may be impossible until the larger issues, such as the status of the province of Quebec within the framework of the Confederation, are resolved.

d. Is it Worth the Cost?

The final issue to be considered is whether the solutions proposed are worth the cost.

There is hardly any cost in removing compulsory conciliation from Canadian statutes. The object of conciliation is to help the parties settle their differences and sign a collective agreement without a strike or lockout. Whether this objective can be better achieved by having compulsion in the conciliation process, as its advocates would claim, is highly questionable.

Woods states that "the Canadian system has not demonstrated clearly that it is superior to others that do not employ the techniques of compulsory conciliation."⁵⁸ The only real cost in removing the element of compulsion is the possible temporary unemployment of some conciliation staff, but these people can easily be absorbed into the other, under-staffed, areas of the industrial relations field.

The costs of the second phase of the proposed solution is considerably higher. The provincial authorities would have to be willing to share their industrial relations autonomy over some firms with the federal government. In return, however, they would share authority with the federal government over industries presently under the exclusive jurisdiction of the CLRP. The advantages of this alternative were discussed in the previous sections.

What would be the drawbacks of the proposed solution, assuring the provinces and the federal government agreed that this is the best alternative for dealing with firms having interprovincial industrial relations interests (a very unlikely possibility which assumes a high degree of maturity on the part of our politicians)?

To answer this question, one would have to look towards the future and attempt to predict the dimensions of bargaining units that a national board would favour. Most likely the board would be partial to interprovincial units. The consequences of this practice would probably encourage a greater formation of multi-plant and multi-employer bargaining units, both at the interprovincial and intraprovincial levels, than otherwise would be the case. This development could extend beyond the

framework of the certification process and lead to the creation of large actual bargaining units composed of any number of certified units.

One factor which could offset this trend towards larger units is the attitude of the national board towards labour and management as compared with that of the provincial boards. Let us assume that the national board created an image that it is consistently favoring labour and the image of the provincial boards in particular provinces would be that they are objective or favoring management; what would be the consequences of this on the decisions of firms to expand operations on an inter-provincial level and thus come under the authority of the national board? If these conditions prevailed, some firms would probably be reluctant to expand their operations beyond the provincial boundaries. Obviously, if the board demonstrated its biases very frequently, this could lead to the results described above. The cost of such development to the economy could be prohibitive. It is very doubtful, however, that the gap that could emerge between the attitudes and practices of the provincial boards and a national tribunal would be large enough to influence interprovincial expansion decisions of Canadian companies.

Although board officers claim that the bargaining units that they certify are only the basic blocks from which the parties may build a variety of other structures,⁵⁹ it is realistic to assume, even at the purely provincial levels, that the boards' practices establish a basic collective bargaining structure which to a great extent is emulated by the bargaining

parties. Thus a national board favoring larger units would probably contribute to the formation of larger units even outside the certification framework.

The dynamic forces of a modern economy lead to larger bargaining units. This development is taking place in the United States, but has been retarded in Canada by the legislative framework, the constitutional allocations of authority over labour relations, and industrial relations policy. The establishment of a national board in Canada would introduce more flexibility into the collective bargaining structure.

FOOTNOTES

1. A.W.R. Carrothers. The Relationship between Law and Policy. Paper delivered to the meeting of the Task Force Research Staff, Ottawa, June 4, 1967, p. 4.
2. Hereinafter referred to as the IRDI Act.
3. Toronto Electric Commissioners vs. Snider. Appeal Cases, 1925.
4. H.D. Woods and Sylvia Ostry. Labour Policy and Labour Economics in Canada. (Toronto: Macmillan of Canada, 1962.) p. 20.
5. Ibid.
6. For a detailed discussion of conciliation in Canada, see Labour Relations Legislation in Canada, (Canada Department of Labour, 1967) Chapter 3.
7. Ibid., pp. 161-162.
8. Ibid., p. 162
9. Interview: Mr. C.C. Bolden, manager, Employee Relations, Dominion Bridge Company, June 12, 1963.
10. H.E. Herman. Determination of the Appropriate Bargaining Unit. Ottawa: Canada Department of Labour. Appendix L, p. 157.
11. E. Robert Livernash. "Recent Developments in Bargaining Structure," The Structure of Collective Bargaining. Arnold R. Weber, ed. (New York: The Free Press of Glencoe, Inc., 1961.) p. 37
12. Interviews: Mr. K.A. Fugh, Deputy Minister of Labour, Alberta, May 21, 1963; Mr. L.H.E. Gault, Chief Executive Officer, British Columbia Labour Relations Branch, May 28, 1963.
13. Op.Cit. H. D. Woods and Sylvia Ostry. p. 271.
14. F.P. Scott, Federal Jurisdiction over Labour Relations, paper delivered to the 11th Annual Conference of the McGill University Industrial Relations Center, Sept. 1959, p. 44
15. Ibid. p. 45.
16. Ibid. p. 45.
17. Ibid. p. 45.
18. Labour Gazette, 1947. p. 1791.
19. Op.Cit. F. R. Scott

20. Archibald Cox. Address given at the Seventh Annual Meeting of the National Academy of Arbitrators. (Washington, D.C., January 22, 1954) Reprinted in The Profession of Labour Arbitration, Jean T. McKelvey, ed., 1946-1954. pp. 106-107.
21. Ibid. p. 107.
22. Ibid.
23. Op.Cit. F.R. Scott, p. 46.
24. Ibid.
25. Ibid. pp. 10-11.
26. Op.Cit. Archibald Cox. p. 108
27. Ibid. p. 108.
28. Ibid. p. 108.
29. Hereinafter referred to as the NLRB.
30. Op.Cit. Archibald Cox p. 108.
31. Op.Cit. F. R. Scott, p. 47.
32. Ibid. p. 48.
33. Ibid. p. 48.
34. Ibid. p. 48
35. Op.Cit. Archibald Cox. pp. 110-118.
36. The arguments for local control of industrial relations were provided in the previous pages.
37. Op.Cit. Archibald Cox. p. 115.
38. Op.Cit. Archibald Cox, p. 115.
39. Ibid.
40. Ibid.
41. Ibid.
42. Op.Cit. F.R. Scott, p. 46.
43. Ibid.
44. Ibid. p. 46
45. Ibid.
46. Ibid.

47. (1956) 5 Dominion Law Reports (2nd), 342.
48. 1955 Supreme Court Reports, 529.
49. Op.Cit. F.R. Scott, p. 49
50. The Labour Relations Act of Newfoundland. S. 63.
51. The Trade Union Act of Nova Scotia. S. 70.
52. The Labour Relations Act of New Brunswick. SS. 57-58.
53. The Labour Relations Act of Manitoba. SS. 60-61.
54. 2T The Trade Union Act of Saskatchewan. S. 36.
55. The Alberta Labour Act. S. 108.
56. Labour Relations Act of British Columbia. S. 83.
57. Interviews of board officers in various jurisdictions by Edward E. Herman, Summer, 1963.
58. Op.Cit. H.D. Woods: p. 272
59. Op.Cit. Interviews by E.E. Herman

CHAPTER V

BARGAINING UNITS AND THE ALLOCATION OF WORK

In this chapter the relationship between the structure of bargaining units and disputes over work allocation decisions is examined. Such disputes can occur over the assignment of work within the firm and over decisions to subcontract work outside the firm. The structure of bargaining units can affect the frequency and nature of such disputes, and can in turn be affected by work allocation decisions. From this it follows that two aspects of public policy in Canada and the U.S. are relevant to the problem. The first is the certification policies and practices of Labour Relations Boards, since these help to shape the structure of bargaining units. The second is the legal arrangements which pertain to the handling of work allocation disputes which do arise, since they influence work allocation decisions and thereby affect the structure of bargaining units. Problems of work allocation disputes both within and among firms will be examined, as will both aspects of public policy.

The Problem

The allocation of work within and among business establishments is a matter of concern to workers, union

organizations, and managements.¹ Work allocation decisions have often been a source of conflict among these interested parties, and during the 1960's one aspect of work allocation--subcontracting--has been an increasingly important union-management issue. As will be shown, the structure of bargaining units is related to conflicts over work allocation.

For the individual worker and particular groups of workers, work allocation decisions affect the availability of employment and income. Their concern over work allocation varies, therefore, with economic conditions in the nation, industry, and firm, being greatest during periods of slack output and scarcity of employment. Since full employment is relatively rare and periods of layoff are part of the work experience of many blue-collar workers--who comprise the bulk of union membership--it is probable that work allocation decisions are a matter of concern to most union members much of the time.²

Union leaders are interested in work allocation not only out of concern for the interests of their members, but also because work allocation decisions can affect the security, power, and prestige of the organization and its leaders. Other things being equal, the more work within the union's jurisdiction, the more satisfied the membership

tends to be and the greater is the likelihood that the incumbent officers will be reelected. Also, change in the amount of work within the union's jurisdiction can affect the size of its membership. To cite an extreme example, if all work performed in a bargaining unit represented by a particular union is transferred outside the unit, the union's bargaining unit is eliminated. The generalization may be made that work allocation decisions can affect the relative size of bargaining units within the firm.

Many unions, particularly craft unions, have well-developed concepts of what types of work should be within their jurisdiction. From this there may arise conflicts over work allocation between unions and/or between union and management. Inter-union conflicts may arise when the work jurisdictional claims of two or more unions overlap. Conflict between union and management may arise regarding whether particular work is to be assigned to a member of the union in question. These conflicts are shaped in large part by the structure of bargaining units, as is discussed below in greater detail.

To management, work allocation is an area of decision-making important to the efficient operation and profitability of the firm. In general, management prefers to retain maximum flexibility in assigning work. It would

like to retain control over the allocation of work within an establishment, among establishments of a multi-establishment firm, and even in relation to other firms (subcontracting). Management may come into conflict with unions when allocation decisions based on its criteria do not give to a union work it thinks should be within its jurisdiction. A conflict situation particularly difficult for management occurs when it is indifferent as to who does a particular type of work, but finds itself "caught in the middle" in a work jurisdictional dispute between two unions. Agreeing with Union A will result in economic pressures from Union B, and vice versa.

The conflicts described above are intensified by rapid change in production methods, especially during periods when employment is less than full. Technological change may result in the creation of new job classifications. If an establishment is divided into multiple bargaining units represented by different unions, in whose jurisdiction will these new classifications be placed? This question is especially important if the technological change results in an overall reduction in employment, which intensifies the scramble for jobs. Managerial reorganization may necessitate the realignment of departmental boundaries and the shifting of jobs from one union's

jurisdiction to another. A union experiencing a reduction of work within its bargaining unit would tend to resist such a shift, thus making the process of change more difficult. Inflexibility regarding work assignment reduces the ability of firms to adapt to change and innovate, and thus may lower the rate of technological change.

Conflicts Over Work
Allocation Within the Firm

Work Allocation Conflicts and the Structure
of Bargaining Units

A basic cause of inter-union work jurisdiction conflicts within an establishment has already been alluded to: the fragmentation of the plant into a number of bargaining units represented by different unions. Without such fragmentation, inter-union conflicts could not take place.

It follows, then, that the objective of reducing intra-plant work jurisdiction disputes would be furthered by the certification of more comprehensive bargaining units. The most comprehensive unit would be establishment-wide, including all categories of employees which may lawfully be included in a single bargaining unit.

At a minimum, control of work jurisdiction disputes by means of the certification procedure requires

that where multiple bargaining units are certified within an establishment the workers in each unit be as distinctive as possible with respect to functions performed, location of their work, skill, training, rates of pay, supervision, and other characteristics which may be used to classify employees. The greater the differences among the workers in the various bargaining units, the less likely are conflicting work jurisdictional claims.

While establishment-wide bargaining units would solve the problem of inter-union conflicts over work jurisdiction, they would not solve all problems regarding work assignment within the establishment. There may still arise the question of which sub-group within the union should do particular work. Shall a task be done by employees in job classification X or classification Y? There would be a tendency for the employees in each classification to assert control over the work to enlarge their job opportunities. Thus, there still might be disagreement over the allocation of work.

But the disagreement is now centered within the union, rather than between unions. The union leader's task is now to reconcile divergent interests within his union, rather than protecting the work claimed by his union against the jurisdictional claims of another union.

Thus, the type of challenge faced by leaders with regard to work allocation within an establishment may differ with the structure of bargaining units within the establishment.

Agreeing to work reallocation within a bargaining unit, however, is likely to be easier for union leaders than allowing work to be shifted to another unit. The dissatisfaction in a given sub-group caused by the loss of work may be at least partially offset by increased satisfaction among those who gain work. Work transferred into another union's jurisdiction, on the other hand, eliminates the offsetting gain in satisfaction.³

Much of what has been said regarding work jurisdiction disputes and bargaining units in a single establishment is of relevance to inter-plant disputes in multi-plant firms. With respect to work allocation, the single establishment is in many respects a microcosm of this type of firm. If the firm is only partially unionized, the workers in the organized plants and the union(s) representing them will want as much work as possible assigned to the union plants. Shifting work previously done in unionized plants to non-union establishments is likely to arouse especially strong opposition. Where all plants are organized, but by different national unions,

each national may try to promote the assignment of work to plants it has organized rather than those represented by another national. Even if all plants are organized by the same national, there is still the possibility that local unions will vie with each other for the assignment of work to their particular plants. The extent of the efforts by each local to advance its interests is likely to vary with the degree of control exerted by the national union over its affiliates.

As in the single-establishment case, certifying a comprehensive, company-wide bargaining unit would tend to reduce conflict over work allocation and, to the extent that conflict did occur, would make it intra-union rather than inter-union in nature. A company-wide unit involving a single union is likely, however, to make easier the reallocation of work among plants, for the same reasons cited previously regarding intra-plant reallocation. Also, as in the single-plant case, work allocation decisions affect the relative size of plant-wide bargaining units within the firm.

The analysis of conflict over work allocation within the firm points to the conclusion that to reduce such conflict Labour Relations Boards should certify relatively comprehensive bargaining units which comprise

entire plants or firms, rather than fragmenting them into a number of smaller units. It is recognized, however, that reducing conflict over work allocation is not the only relevant consideration in determining the appropriateness of a bargaining unit. As discussed in the chapter dealing with craft units, in some cases there may be good reason to certify small bargaining units restricted to employees in specific occupations. It is not recommended, therefore, that Labour Relations Boards follow a blanket policy of refusing to certify bargaining units smaller than plant-wide or company-wide in scope. It is recommended only that the Boards regard the implications of alternative bargaining unit structures for intra-firm work allocation disputes as a significant consideration in making decisions regarding the appropriateness of bargaining units.

Public Policy and Inter-union Work
Jurisdiction Disputes Within the Firm:
Canada and the United States⁴

In both Canada and the United States, inter-union disputes over work assignment are regulated by law. In both nations, the basic components of such regulation are: (1) prohibiting the use of strikes in work jurisdiction disputes during contract periods, and (2) providing alternative means of settling such disputes. While Canadian

and U.S. laws are similar regarding (1), there are significant differences with respect to (2).

Legal regulation of work jurisdiction disputes can affect the structure of bargaining units, although the characteristics and magnitude of the effect is not easy to measure or generalize about. As noted previously, where there are multiple bargaining units in a firm, work allocation decisions can affect their relative size. While statistical proof is lacking, it is at least arguable that the pattern of work allocation, and therefore the structure of bargaining units, are different from what they would have been had economic pressures been allowed as lawful means of settling work jurisdiction disputes--i.e., in the absence of legal regulation.

In Canada, ten of the eleven labour relations acts prohibit work stoppages during the term of a collective agreement, the lone exception being the Saskatchewan Act.⁵ Furthermore, in general, "disputes over the terms of an agreement (except contemplated and negotiable revisions), as distinct from those over the interpretation and application of an agreement, are precluded by the binding effect of the agreement."⁶ Where there is an unresolved dispute over contract interpretation and

application, the alternative to the (prohibited) strike provided by law is arbitration."⁷

However, there are serious limitations to present arrangements as a means of handling work jurisdiction disputes. In the absence of specific contract provisions dealing with work assignment, there is the possibility that arbitration may not be used, and the dispute will remain unresolved until the next contract negotiations.

In all jurisdictions disputes arise that were not thought of when the terms of the agreement were concluded, particularly in recent years over management's right to alter unilaterally processes or operations--and thereby working conditions.⁸ As the statutes are today, it seems that in such disputes there is little alternative but to await the next round of negotiations; arbitration cannot apply as it is limited to the terms of the agreement--unless the parties agree to submit the particular dispute to arbitration--and work stoppages are forbidden.⁹

In many instances, postponing the settlement of disputes allows them to fester over long periods of time, which is hardly conducive to good union-management relations.

Furthermore, even though a particular work jurisdiction dispute is considered arbitrable, the effectiveness of present arbitration provisions in dealing with the dispute is questionable.

(This) type of dispute (is) difficult to resolve through arbitration.....

(A) difficulty of arbitrating such a dispute is that an award is not binding on an organization that is not a party to the agreement. Where unions with overlapping jurisdictions are signatories to separate agreements with an employer(s), there is no compulsory method of making both union parties submit to the same arbitration case together with the employer.¹⁰

This problem is dealt with in only two acts, those of Alberta and Ontario, and in different ways.¹¹ Thus, while strikes are generally banned as a means of settling inter-union work jurisdiction disputes in Canada, the alternative method provided by law has some significant weaknesses.

In the U.S., the National Labor Relations Act (NLRA) makes it an unfair labour practice for a union to engage in or encourage a strike if an object is "to force or require an employer to assign particular work to employees in one union or craft rather than to employees in another union or craft."¹² Given the broad coverage of the NLRA, this means that in most U.S. firms the use of the strike weapon in inter-union work jurisdiction disputes is prohibited. Where there is no private agreement and prohibited strike activity occurs, the National Labor Relations Board (NLRB) is empowered to make a

legally binding decision regarding work assignment and may seek an injunction against the prohibited activity.¹³ Thus, like Canadian law, U.S. federal law provides arbitration as an alternative to strikes in settling inter-union work jurisdiction disputes.

The deficiencies noted in Canadian arbitration arrangements are not present in U.S. federal law. In the U.S., there is no question of arbitrability. The NLRB has the power to arbitrate inter-union work jurisdiction disputes whether or not there are contract provisions dealing with work assignment. Whether the contending unions are signatories to separate agreements is also irrelevant under U.S. law. Thus, the U.S. approach appears to be less restrictive than the Canadian. It focuses on the fact of an inter-union work jurisdiction dispute and the need to settle it, and puts aside questions of arbitrability and signatory parties, questions which are highly significant under Canadian law.

It is concluded that the U.S. approach is preferable to the Canadian as a means of handling inter-union work jurisdiction disputes when strikes over the issue have been banned. There is less concern with legalisms and more with the realities and requirements of industrial relations. If third party decisions are to

be substituted for economic pressures in settling work jurisdiction disputes, U.S. legislation and experience in this area are worthy of careful study by policy makers in Canada.

The Subcontracting Issue

Conflicts over subcontracting revolve around "...the question of the boundaries of the firm and the rights of those inside and outside these variously defined boundaries."¹⁴ Of all the activities involved in producing a firm's product, which shall be done within the firm and which shall be performed outside it? Attempts to answer this question can bring about conflict between "inside" workers and "outside" workers employed by actual or potential subcontractors as each group tries to maintain or expand its employment opportunities relative to those of the other. Unless both groups of workers belong to a single union, they can also bring about conflicts between "inside" and "outside" unions, each of which desires to maintain or expand the size of its bargaining unit relative to that of the other. For employees, subcontracting involves more than the pressures to which they may be subjected by inside and outside workers and unions. It is "a part of the general problem of integration versus specialization," and

is "the kind of decision that stands at the very core of the management function--coordination, the allocation of resources along various lines of investment."¹⁵

Chandler divides the work of a firm into "three categories: a hard core of activities, always identified with the enterprise; a variable set, sometimes done by the firm and sometimes contracted out; and a fringe element of functions that usually are performed by others."¹⁶ Attempts to change this "mix" promote conflicts over subcontracting.

At times the formulation of this "mix" changes rapidly. On the other hand, it may be stable for long periods. It is a reasonable presumption that questions of rights (of inside and outside groups) arise in periods of change and are quiescent when the mix is stable.¹⁷

It appears that this is a period of rapid change in the "mix," because subcontracting has been a major source of labour-management conflict during recent years. Chandler notes that, "Since the late 1950s the contracting-out question has flared into prominence on the American scene," and states that, "One of the most inflammatory issues of the late 1950s and early 1960s was the firm's practice ofgiving maintenance and construction work to outside companies instead of assigning these jobs to the crew in the plant."¹⁸ Because of the

great importance of the subcontracting issue in present-day labour-management relations, heavier stress will be placed on this aspect of the work allocation problem than on the intra-firm aspects examined previously.

Factors Affecting Subcontracting Decisions:
Economic, Technological, and Size of Plant

Economic theory would indicate that the relative costs of utilizing inside labour forces and outside contractors would be a major determinant of subcontracting decisions. Empirical investigation indicates, however, that relative costs often are not calculated with any high degree of precision--and that in many cases ".....contracting-out might be chosen for reasons such as speed and efficiency even though it was not the cheaper alternative."¹⁹ It is conceivable, of course, that improved costing techniques and increased use of data processing equipment will enable precise comparative cost estimates to be made with greater ease, thereby increasing the importance of the comparative-cost criterion. Empirical study does indicate, however, that one element in comparative costs--the wage differential between outside and inside craft workers--is an important criterion applied to decisions over subcontracting maintenance and construction work. Any factors which narrow the differential between inside and outside rates will favour the outside forces.²⁰

In Chandler's authoritative study on subcontracting, it is concluded that, "While economic factors may have intensified shifts to contracting-out, there were many indications that technological change provided the underlying thrust."²¹

For instance, new technologies have been making possible the fractionating of processes formerly necessarily conducted by one firm.now certain operations can profitably be turned over to others. In advanced process technology tasks have been rationalized to the point where contractors can enter with a minimum of disturbance.

In the past the shell was the main item requiring maintenance in a building, but gradually emphasis has shifted to its contents--to mechanical systems and utilities. The latter may need the services of specialists who can divide their attention among a number of industrial customers. In addition, interest in contracting-out has been stimulated by a reluctance on the part of industrial management to invest in equipment and methods which may rapidly become obsolete in an era of continued technological change.²²

It is Chandler's view that ".....economic and technical trends in the late 1950s and early 1960s served the cause of the outside forces more than that of their inside counterparts." Thus, there have been changes in the "mix" of activities discussed previously, changes toward increased subcontracting. These changes have brought subcontracting to the fore as a major contemporary issue in industrial relations.

Subcontracting and the Structure of Bargaining Units

The Chandler study indicates a relationship between the structure of bargaining units in a plant and the degree of control inside union(s) are able to exercise over subcontracting decisions. In those few plants studied which were organized entirely on a craft basis, the unions had little or no control. The weakest type of arrangement, however, was a combination of both industrial and craft units within a single plant. Furthermore, the weakness of craft and mixed bargaining units did not appear to vary with plant size. Union control over subcontracting decisions was greater where there existed a plant-wide industrial-type bargaining unit, particularly in large plants where maintenance and construction personnel constituted a sizeable proportion of the total labour force. Thus, policies and practices of Labour Relations Boards which promote the certification of comprehensive industrial bargaining units would seem to enhance the ability of inside unions to protect their work jurisdictions and bargaining units against encroachment by outside forces.

A larger issue is the suitability of the present structure of bargaining for coping with the problems posed by changing patterns of work allocation between inside labor forces and subcontractors. It is

arguable that with respect to dealing with the subcontracting issue the structure of bargaining leaves much to be desired. Chandler comments as follows:

The fact that the work force is organized into two competing groups, outside (usually craft) and inside (usually industrial) unions, is a structural liability that compounds problems in periods of adjustment. The efforts of each group to defend its particular job territory against the invasion of the other tends to constitute a pathetic side show rather than a problem-solving contribution to the main event, the reorganization of the work of the industrial firm and its impact on the labor force as a whole.

Management probably has benefited when competition between the inside and outside forces has stimulated either group to improve its operating efficiency. In fact, managers have encouraged this type of competition. Thus, we found cases in which company officials, spurred on by new technological developments, threatened the inside forces with a move to adopt contract maintenance. But when competitionfocused largely on the exclusion of one or the other group from a given area, the emphasis shifted from improving efficiency to improving political strategy.²³

Given the present structure of collective bargaining, with its separate inside and outside bargaining units, it is not difficult to understand why inside unions often vigorously resist the current trend toward more subcontracting. As Woods and Ostry have stated, "Carried to a logical conclusion, (subcontracting) could virtually destroy a bargaining unit and the agreement covering it."²⁴

One response to inter-union conflicts over subcontracting has been the negotiation of "craft-industrial union pacts regarding the division of maintenance and construction work between the inside and outside forces....." Such pacts began to be developed during the late 1950s when increased subcontracting, promoted by technological change, brought about a situation in which "Industrial unions, shrinking in size, clashed head-on with construction contractors and unions seeking new and stabilizing industrial markets for their work."²⁶

It is questionable, however, whether such pacts are effective in dealing with the subcontracting issue.

On this point Chandler comments as follows:

Each major union group had a basic problem of loss of strength due to loss of members, and the very existence of the pacts indicated the intensity of the problem. Thus, a truly flexible arrangement or one that recognized the opening of new work opportunities for either group was not feasible. In a period of change, the agreements failed to take cognizance of the trends of the times. Rather, the pacts constituted benign affirmations of.....the historic status quo.²⁷

The pacts, then, do not allow adequate flexibility in adjusting work allocation between inside and outside bargaining units in the light of technological change which may make the old pattern of allocation obsolete. Furthermore, some bitter inter-union disputes and

strikes over subcontracting have occurred despite the existence of pacts which supposedly settled the issue of work allocation between inside and outside bargaining units.

Failure of inter-union pacts to deal adequately with the subcontracting issue in a dynamic economic and technological environment may stimulate unions to turn to an alternative solution: combining both inside and outside workers into a single union organization. This would involve the merger of conflicting organizations or the unionization of non-union outside workers presently competing with inside labour forces. The impact of these developments on the structure of collective bargaining would be significant; separate and competing inside and outside bargaining units would be eliminated in favour of a single comprehensive unit--formal or informal--which would include all workers engaged in or supporting a firm's production process. Woods and Ostry note that as subcontracting expands, ".....it is quite likely that unions will find it necessary to protect the bargaining unit by expanding it to cover the labour-market competition provided by the sub-contractors," and add that this "..... indicates yet another reason for flexibility in the evolution of bargaining units."²⁸

Chandler has written as follows on the form merged unions are likely to take and the advantages of mergers:

It is possible that the hard-to-resolve inside-outside conflict may be the seedbed for eventual mergers, although this does not necessarily imply a firmer consolidation of the craft and industrial branches of the AFL-CIO. A more logical alternative would be the grouping of all inside and outside units related to a particular production process. New union structures, "superunions," including all those working on a given technology or process, might lead to the end of jurisdictional battles for the work of the industrial firm. Unquestionably, management as well as the unions, would benefit from this development.union programs related to structural changes, possibly the creation of superunions of insiders and outsiders, would permit maximum flexibility in coping with the problem of who shall perform industrial work.²⁹

What is envisioned, then, is the possible development of "process unionism" and of bargaining units which cut across company and even industry lines and comprise all activities relating to a particular production process.

As yet, there has been only limited movement in this direction. Chandler notes that ".....some unions have moved in this direction, but, by and large, these have been piecemeal activities, designed to protect a particular inside or outside jurisdiction, rather than concerted efforts to rationalize the system."³⁰ However,

the possibility that "concerted efforts" to change the structure of bargaining units along the lines indicated will increase should not be ignored. There arises the question, then, of what should be appropriate certification policies and practices regarding such changes.

Subcontracting and Public Policy

It is concluded that legislation and the policies and practices of Labour Relations Boards regarding bargaining unit certification should allow a high degree of flexibility in the development of process-wide bargaining units, should such a trend emerge in the private sector of the economy. Where such units would allow a more rational and flexible approach to subcontracting, petitions for bargaining units comprising both inside and outside workers should be approved, unless it is clear that the unit is inappropriate according to other criteria and the disadvantages of the proposed unit are judged to outweigh the advantages.³¹ This would appear to require more flexibility and willingness to allow experimentation than Canadian Labour Relations Boards have shown in the past. Where new, large actual bargaining units would extend across provincial boundaries, changes in Canada's compulsory conciliation requirements would also be necessary for the efficient functioning of such units.³² The development

of the type of bargaining unit described would represent an effort by unions and management to reduce conflict and develop a more rational approach to the problems posed by changing patterns of subcontracting in a dynamic and technological environment; such efforts should not be hindered by public policy.

In both Canada and the U.S. certain aspects of public policy other than the certification process bear upon disputes over subcontracting decisions. It is pertinent to examine these aspects, since the application of particular policies in this area of decision-making can result in a pattern of subcontracting decisions and a structure of inside and outside bargaining units different from those which would have emerged had different policy alternatives been utilized. As with intra-firm work allocation decisions, the impact of public policy is not easy to measure. It is possible only to make a few broad and tentative generalizations regarding Canadian and U.S. public policies.

In Canada, policy provisions relating to subcontracting disputes have "tended to uphold the legalistic approach."³³ A key element in the Canadian approach is legislation which requires no strikes and compulsory arbitration of disputes over the application and

interpretation of contract provisions during the term of a collective bargaining agreement. The question of arbitrability, previously examined with respect to intra-firm work assignment disputes, is equally pertinent to controversies over subcontracting.

In the absence of a relevant clause dealing with the matter, subcontracting remains a management prerogative which unions can attempt to modify only at the next contract negotiation. Furthermore, where subcontracting decisions are arbitrable, the arbitrators have been mainly judges and lawyers, of whom the "great majority hewed to a narrow interpretation of the contracting-out issue rather than considering it in the broader context of the total industrial relations situation."³⁴ "In general, Canadian unions have tended to operate within the legal framework by attempting to 'tighten up the agreement' --that is, to press for more explicit and specific contract provisions designed to control erosion of their bargaining units through subcontracting."³⁵

In the U.S., public policy has been injected into subcontracting disputes to a greater extent than in Canada. To begin with, NLRB and court decisions have made subcontracting a mandatory issue of bargaining. That is, refusal to negotiate over subcontracting, even if the

subject is not covered in an agreement currently in force, is a violation of management's legal obligation to bargain in good faith. A union thus has the legal right to discuss with management any subcontracting decision which affects employees in its bargaining unit. Furthermore, NLRB and court decisions have provided significant impetus for the use of arbitration as a means of settling subcontracting disputes. Unless there is a specific contract clause to the contrary, subcontracting is an arbitrable issue, with doubtful cases decided in favour of arbitration. If agreement on subcontracting cannot be reached through collective bargaining, unions have broad authority to process the dispute through the grievance procedure, the final step of which is usually arbitration. Thus the use of arbitration in subcontracting disputes has been given wider scope in the U.S. than in Canada, where arbitrability depends on the existence of a relevant contract clause and the arbitrator is confined to interpretation of that clause.³⁶

It is arguable that, while the magnitude of the effect is not clear, U.S. public policy tends to favour inside bargaining units as against outside employees. Inside workers and their unions are at least guaranteed the right to press their positions through collective bargaining

and, in most cases, through grievance procedures which culminate in arbitration. Chandler has commented on the impact of the U.S. policy approach as follows:

The effect of (NLRB and court) decisions on theshares of the inside and outside forces was not clear. The insider was entitled to a hearing, but the outsider could still get the work. But implicit in the orders was the notion that the inside workers were entitled to some consideration.

.....there also was implicit a positive affirmation of the primacy of the inside relationship and the inside employment bond, in part born of a sympathy for the plight of the man who had based his expectations on its continuance. Presumably, the contractor's employee, noted for his flexible adaptation to the vagaries of the labor market, would be expected to weather employment crises without becoming an object of social concern.³⁷

It may be concluded that the U.S. public policy approach to subcontracting disputes has been less legalistic in its orientation than the Canadian approach, and has given more emphasis to the total industrial relations context within which a dispute occurs. Comparing the two nations, Chandler has written that in the U.S. "Legislation gave fuller course to 'free' collective bargaining, and arbitrators.....were more evenly divided between strict legalists and those who 'examined the entire case'." ³⁸ She offers the following evaluation of the arbitration process as a means of settling subcontracting disputes in the U.S.:

On the positive side arbitration has not led to the development of a formidable legal structure for contracting-out.....and, by and large, arbitrators have acted in a manner that should have served to encourage the development of responsible relationships among the parties themselves. On the other hand, arbitration has not succeeded in developing much in the way of creative guidelines for future action. However, this contribution simply may have been outside the scope of its function. Those who hoped for more probably did not possess a realistic view of the uses of the arbitration process.³⁹

As a whole, the public policy approach and the characteristics of the arbitration process in the U.S. would seem preferable to Canadian arrangements for dealing with the problem of subcontracting disputes. As compared with Canada, the U.S. places more stress on the settlement of disputes, with greater encouragement being given to settlement via the collective bargaining process.

FOOTNOTES

1. An "establishment" is a single production facility, such as a plant, store, warehouse, or construction site. Ownership of separate establishments may be vested in a single firm or in more than one firm, and, as in the case of construction sites, more than one firm may be found in a single establishment.
2. Higher unemployment compensation benefits and an increasing number of supplementary unemployment benefits and guaranteed annual wage plans may conceivably reduce this concern.
3. There is an implicit assumption here that workers are not freely transferable, perhaps because of department-wide rather than establishment-wide seniority systems.
4. For purposes of this discussion, "firm" includes construction sites, where inter-union work jurisdiction disputes occur frequently.
5. Canada Department of Labour, Legislation Branch, Labour Relations in Canada (1967), p. 223.
6. Ibid., p. 237.
7. For a discussion of arbitration provisions in various Canadian jurisdictions, see Labour Relations in Canada, pp. 241-52.
8. Such alteration often involves work-assignment decisions.
9. Labour Relations in Canada, p. 243.
10. Ibid., p. 253.
11. For further discussion, see Labour Relations in Canada, pp. 253-55.
12. NLRA, Sec. 8 (b)(4)(d).
13. Herbert R. Northrop and Gordon F. Bloom, Government and Labor (Homewood, Illinois: Richard A. Irwin, Inc., 1963), p. 93.
14. Margaret K. Chandler, Management Rights and Union Interests (New York: McGraw-Hill Book Company, 1964), p. 29.

15. Ibid., p. 7. Parenthetically, it may be noted that subcontracting can involve either having work done on the premises of other firms, as in the case of purchasing components from subcontractors, or utilizing the employees of other firms on one's premises, as in cases where construction or maintenance work is subcontracted rather than performed by inside employees.
16. Ibid., p. 30.
17. Ibid., p. 31.
18. Ibid., pp. 7, 29.
19. Ibid., p. 42.
20. Ibid., pp. 45-47.
21. Ibid., p. 47. Italics not in original.
22. Ibid., pp. 47, 48. Italics not in original.
23. Ibid., p. 174.
24. H. D. Woods and Sylvia Ostry, Labour Policy and Labour Economics in Canada (Toronto: MacMillan of Canada, 1962), p. 500.
25. Chandler, Management Rights and Union Interests, p. 189. For an examination and evaluation of these pacts, see pp. 189-203.
26. Ibid., p. 191.
27. Ibid., pp. 191-92.
28. Woods and Ostry, op. cit., p. 500.
29. Chandler, Management Rights and Union Interests, pp. 174-75.
30. Ibid., p. 175.
31. Some potential disadvantages of larger as compared with smaller bargaining units are examined in the chapter dealing with craft units.

32. The difficulties that compulsory conciliation with provincial jurisdiction pose for actual inter-provincial bargaining units are examined elsewhere in this study.
33. Chandler, Management Rights and Union Interests, p. 64.
34. Ibid.
35. Ibid., p. 65.
36. Ibid., pp. 236-40.
37. Ibid., p. 241. Italics not in original.
38. Ibid., p. 65.
39. Ibid., p. 212. Italics not in original.

CHAPTER VI

UNION COOPERATION, EMPLOYER COOPERATION, AND THE STRUCTURE OF BARGAINING UNITS

Through a variety of means both unions and employers form alliances for purposes of collective bargaining. Whatever the particular devices used to achieve cooperation, such alliances affect the formal or informal structure of bargaining units. In this chapter the various arrangements for cooperation and their impact on bargaining unit structure will be examined, and conclusions regarding the implications of cooperative arrangements for public policy will be drawn.

Inter-Union Cooperation in Collective Bargaining

A current trend which may alter significantly the structure of collective bargaining is the growth of inter-union cooperation in bargaining. Under inter-union cooperation two or more unions join together in negotiating with a firm or industry in which they have bargaining rights.¹ Multi-union cooperation per se is not new. On the local level it has been practiced widely for many years in the construction industry, where employers have negotiated with committees of building trades unions "since the early days of the bargaining relationship."² What is new in the latter

half of the 1960's is increasing cooperation among industrial unions negotiating with large manufacturing firms. Much of the impetus for this cooperation has come from the AFL-CIO's Industrial Union Department (IUD), which has established the promotion of inter-union cooperation as a major objective.

While precise data are lacking, there is some evidence to support the conclusion that the IUD has had some notable successes in the U.S. and that inter-union cooperation in manufacturing industries has increased significantly. Early in 1966 it was estimated that there were over 60 bargaining coalitions of AFL-CIO unions in manufacturing, as compared with only 24 less than two years earlier. Furthermore, union coalitions were dealing with some of the largest U.S. corporations.³

It appears likely that the drive for inter-union cooperation will extend to Canada as well as the U.S. Many of the U.S. unions currently forming coalitions for bargaining purposes have affiliates in Canada, and many of the firms with which they negotiate have Canadian branches. Furthermore, the conditions promoting inter-union cooperation, which are examined below, appear to exist in both nations.

Techniques of inter-union cooperation

Inter-union cooperation may be accomplished by a variety of means, all of which affect the formal or informal structure of bargaining units. The most formalized arrangement for inter-union cooperation would be a certified bargaining unit in which two or more national unions were represented. A multi-union bargaining unit also may be formed without the formality of certification by mutual agreement among the unions and management(s) involved. In this case the actual bargaining unit may comprise a number of certified units. There might be a single agreement for the entire actual unit or separate but similar agreements for each certified unit, but in either case there would be a single, multi-union negotiation.

Most of the new cooperative arrangements among industrial unions, however, are less formal. Separate union-by-union negotiations are usually maintained, but with the important difference that the bargaining positions and tactics of the cooperating unions are coordinated in such a way that management is presented with a united front. Such coordination may be developed away from the bargaining table by means of exchanging information and jointly developing a single set of proposals and tactics

which each union will utilize in its (nominally) separate negotiations. Cooperation may be furthered by cross-representation on negotiating teams, with each union in the coalition placing a representative on the teams of the other unions. Establishing common expiration dates for the agreements negotiated by the unions comprising the coalition would also enhance the effectiveness of inter-union cooperation, since in the absence of agreement the entire coalition can strike simultaneously.

Considering the structure of collective bargaining as a complex of informal as well as formal relationships, it may be concluded that effective inter-union cooperation by means of the arrangements described in the preceding paragraph can alter significantly the structure of bargaining. Formally, the structure of bargaining units, certified and actual, appears to be maintained. But such arrangements in effect create informal multi-union bargaining units, since nominally independent negotiations are, for practical purposes, now tied together by common union policy. Whether such informal units will eventually be developed into formal multi-union bargaining units cannot be determined with any degree of certainty at this time, although one may

speculate that there may be some tendency in this direction. The role of the certification policies of labour relations boards and Canada's compulsory conciliation provisions in the development of arrangements for inter-union cooperation is examined below.

Inter-union cooperation:
causes and implications

A major union objective in establishing inter-union cooperation is to increase their bargaining power vis-à-vis employers who deal with more than one union. "Using the divide and conquer principle, employers have often been able to deal advantageously with each union separately, but joint bargaining removes this advantage."⁴ Pressures for inter-union cooperation have been intensified by the trend toward corporate diversification which is evident in the U.S. and Canada, since diversification often results in an increase in the number of unions with which a firm negotiates. As one writer has noted, "Many companies have grown by expanding into new fields, often throwing together unions with no history of cooperation and diluting the strength of individual units negotiating with the parent company."⁵ A union official is reported to have summarized the situation as follows:

"The major business trend since World War II has been diversity," says Jack Conway, head of the IUD and a former top aide to United Auto Workers President Walter P. Reuther. "As companies grow, it's becoming harder for any single labor unit to influence company policy. Outside steel, autos, and other industries where one union dominates, the only way we can have an impact on a large company is by presenting a united front."⁶

Greater effectiveness of the strike weapon is an example of the benefits which unions may derive from cooperation. A large, multi-plant firm may be better able to withstand a strike by one union representing only part of its plants than a combined strike by all unions which shuts down all plants.⁷ Early in 1966 Klein concluded that "The added leverage made possible by the joint approach already has led to some notable union successes....."⁸

Proponents of inter-union cooperation also argue that, in addition to increasing the union's bargaining power, it is a necessary condition for effective collective bargaining in diversified, multi-plant, multi-union firms. Irving Abramson, General Counsel of the International Union of Electrical Workers, takes this position in the following statement:

.....without coordinated bargaining, negotiations by a number of unions with a common employer is ineffectual and frequently an exercise in futility.

Let me give just one example. Assume, as at GE,

there are 80 labor organizations attempting to bargain for a modification of a pension and insurance plan which is uniformly applied to all employees of that company. Under these circumstances, demands by a number of unions for different modifications to a single pension plan makes no sense whatever, both from the union's point of view as well as from the employer's. The employer will understandably resist variegated and possibly conflicting proposals for pension changes. The point is, however, that a single union under these circumstances has no bargaining power at all unless it concentrates its activities and consults with other labor organizations in attempting to achieve uniform modifications of the pension plan, uniformly applicable to all the employees regardless of their union affiliation.⁹

In view of the increased bargaining power unions achieve under multi-union cooperation, it is hardly surprising that a majority of employers are opposed to it. There are exceptions, however, largely on the grounds that bargaining with several unions as a single unit simplifies the collective bargaining process. One company spokesman stated that multi-union bargaining "worked well for us," adding that "meeting with all five unions at the same time made the (collective bargaining) process more efficient."¹⁰ In a U.S. Bureau of Labor Statistics study it was concluded that some large companies endorse multi-union bargaining because "it can make the administration of complex fringe benefit provisions, like pension programs, more efficient and economical."¹¹ Thus, in evaluating multi-union

cooperation the employer must balance his loss of bargaining power against the possibility of more efficient contract negotiation and administration. Where the latter consideration is predominant, the union drive for multi-union cooperation is reinforced by employer consent.

Attention also has been called to some potential longer-run implications of inter-union cooperation. Like multi-employer bargaining, inter-union cooperation can promote greater uniformity of wages and benefits among employers, thus reducing employer competition through the medium of differentials in labour rates and standards. Furthermore, inter-union cooperation may lead to significant changes in the structure of the labour movement. Such cooperation "may hasten the close ties (among unions) that the AFL and the CIO hoped to establish through their merger....."¹² Some union officials even "hint that coordinated efforts could pave the way for mergers."¹³ Klein has written as follows:

Some union leaders see a new, more effective union structure emerging from cooperative bargaining efforts. The IUD's Mr. (Jack) Conway notes that effecting internal changes in unions isn't a stated purpose of bargaining coordination, "but

it could be a by-product." Mr. Conway believes that "the old concepts of jurisdiction are changing. Labor reflects the character of the industries it deals with, and as they become more centralized, so will unions." Cooperation, he says, could create a climate that would lead to simplification in the trade union movement.¹⁴

As Mr. Conway noted, inter-union cooperation promotes centralized bargaining and decision making within the labor movement, just as do multi-employer and multi-plant bargaining in which a single national union is represented. The implications of centralization are discussed elsewhere in this study.

Inter-union cooperation and public policy

Certification of multi-union bargaining units.--

The policies and practices of Labour Relations Boards regarding certification of multi-union bargaining units can influence both the extent and types of inter-union cooperation. Policies and practices which make it difficult to obtain such certifications would hinder the development of this most formalized of all cooperative arrangements, and perhaps the development of inter-union cooperation in general. But, while they might slow the trend toward increasing cooperation, they might not halt it. Rather, they might promote the less formalized arrangements for inter-union cooperation examined previously.

Relying on cooperative arrangements less formal than certified multi-union bargaining units can sometimes present difficulties for unions. It is arguable that an alliance of unions attains maximum cohesiveness when the members of the alliance are bound together in a single bargaining unit formally certified by a Labour Relations Board. In a voluntary, non-certified multi-union bargaining unit, or under the other less formal arrangements, the continued existence of the alliance is at the discretion of its members; each retains the legal right to withdraw at any time. As Mr. Don Doherty, a bargaining coordinator for the IUD has stated, "There's no legal way of holding the unions to coordination if they don't want to stick."¹⁵ In a certified multi-union bargaining unit, however, withdrawal of a union from the unit or dissolution of the unit ordinarily would require approval by a Labour Relations Board. Under certification it is likely that unions "will not readily be able to escape responsibility to bargain as a group for all constituents."

In Canada, there are statutory provisions for multi-union certifications in nine jurisdictions. A 1966 amendment to the Ontario Labour Relations Act provides for certification of a council of trade unions

in the construction industry. In addition, there are provisions in the Federal Act and those of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island which allow two or more unions to apply for joint certification and the granting of certification if the proposed unit is considered appropriate by the Labour Relations Board. It appears that in practice, however, the provisions other than that of Ontario have been applied mainly to joint applications of locals affiliated with the same parent body, and therefore have not been utilized to create the type of multi-union bargaining units under discussion in this chapter.¹⁷

In the U.S., there is no provision of the National Labor Relations Act which deals specifically with multi-union bargaining units. Lacking statutory direction, the NLRB has followed a policy of allowing petitions for multi-union units where, in view of the total situation, such units are deemed appropriate. Petitions for multi-union bargaining units are not common, however, and there has not yet been developed a detailed set of specific criteria to be applied in determining the appropriateness of such units.

Available evidence would indicate, then,

that the growth of inter-union cooperation in U.S. industries during recent years has taken place by means other than certification of multi-union bargaining units by the NLRB; the impetus for establishing union coalitions has come from organized labour rather than NLRB certification policies and practices. Furthermore, the evidence presently available does not indicate that unions have refrained from petitioning for multi-union bargaining units out of the conviction that NLRB policies and practices are biased against such units. Why coalitions of industrial unions have not attempted to obtain more multi-union certifications must for the time being remain a matter of conjecture. It is not inconceivable, of course, that the incidence of petitions for multi-union bargaining units will rise in the future. Indeed, it is at least arguable that this will be the likely outcome of the development of less formal arrangements for inter-union cooperation which is now occurring. It is pertinent, then, to examine in broad outline what are appropriate certification policies and practices regarding multi-union bargaining units for both Canada and the U.S.

It is concluded that multi-union bargaining

units should not be banned by statutory law and that Labour Relations Boards should be allowed a high degree of flexibility in certifying such units. Furthermore, the boards should judge applications for multi-union units on a case-by-case basis with no prior disposition against certifying such bargaining units. Despite the difficulties often found in all forms of centralized bargaining, the case for inter-union cooperation in large, diversified firms in which a number of unions have bargaining rights appears to be a strong one. In such firms cooperation among unions, which may take the form of certified multi-union bargaining units, may be necessary to maintain parity of bargaining power and the effectiveness of collective bargaining as a means of decision making. Where this is the case inter-union cooperation in general, and multi-union bargaining units in particular, should not be discouraged.

Compulsory conciliation and inter-union cooperation.--The compulsory conciliation arrangements currently extant in Canada may in some instances be a significant barrier to effective inter-union cooperation. Such could easily be the case where the unions forming a coalition represent workers in plants located in several provinces and subject to provincial rather than federal

jurisdiction. Under these circumstances the union coalition could establish uniform bargaining proposals, but coordinated strike action would be difficult, due to the need to conform the separate conciliation processes of the various provinces. As Woods and Ostry have noted, "In a large national complex.....the parties may be required to conform to seven or eight conflicting patterns of conciliation requirements running over a period of months."¹⁹ If the union coalition were operative only within a single province, there would be no such difficulty. But the present U.S. trend toward greater inter-union cooperation is concentrated in the type of large, diversified, multi-plant firm whose operations, in the Canadian context, are very likely to be inter-provincial in scope. Thus, compulsory conciliation arrangements form a significant barrier to the extension to Canada of inter-union cooperation in the type of firm where, in recent times, it has grown most rapidly in the U.S.

In view of the flexible and permissive public policy toward inter-union cooperation advocated previously, it would seem desirable to eliminate compulsory conciliation or at least create effective arrangements for a single inter-provincial conciliation process in those disputes which are inter-provincial in scope. The

following comment by Woods and Ostry on the effects of compulsory conciliation and provincial jurisdiction are relevant to inter-union cooperation (as well as multi-plant and multi-employer bargaining by a single union and the formation of actual bargaining units which are larger than certified):

If compulsory conciliation were dropped from Canadian policy, even with provincial certification, the parties would be free to merge bargaining units and to negotiate, engage in work-stoppages, and sign agreements without too much concern about the demands of the law. If we insist, however, on provincial jurisdiction and retain the present system of compulsory conciliation, with its suspension of the work stoppage, part of the natural evolution of collective bargaining institutions will be prevented, and much ingenuity will be displayed in attempts to evade the law.²⁰

There is some reason to believe that the growth of inter-union cooperation is a "part of the natural evolution of bargaining institutions" which "will be prevented," or at least hampered, by the continuation of compulsory conciliation and provincial jurisdiction.

The "duty to bargain" issue.---A legal issue regarding inter-union cooperation which has arisen in the U.S. is whether managements' statutory obligation to bargain extends to negotiating with a bargaining team containing representatives of unions other than the one certified as bargaining agent for the particular bargaining unit. (As noted previously, cross-representation on

bargaining teams is one device for promoting inter-union cooperation while maintaining separate, union-by-union negotiations.) Can management lawfully refuse to negotiate with such a bargaining team, or does refusal constitute evasion of management's legal obligation to bargain? This is the question raised in the General Electric case now pending before the U.S. Supreme Court. While this particular case is not directly pertinent to Canada, it is relevant to examine briefly and in broad outline the issue raised, since Canada also imposes an obligation to bargain on employers, and Canadian as well as U.S. unions may use the tactic of cross-representation on bargaining teams.

The argument for the legality of refusal to negotiate with such a "mixed" bargaining team rests on the contention that an employer is legally obligated to negotiate only with a certified union, and not with an uncertified coalition of unions. The opposing argument is that a certified union is free to select its bargaining team without interference from management, so that management must negotiate no matter what the union affiliation of the team members.

Upholding the latter argument would make it relatively easy to utilize cross-representation, since

the decision would be left solely to the unions. Accepting the former argument, on the other hand, would give management veto power over a decision by unions to utilize cross-representation. Given the suspicion of inter-union cooperation which currently prevails among the majority of employers, such a policy is likely to deter the use of cross-representation. While this could make inter-union cooperation more difficult, it is not likely in itself to reverse the trend toward increased cooperation among unions, since cooperation may still be achieved by other devices. For example, coordination of bargaining policies and strategies could still be achieved away from the bargaining table. Elimination of such coordination would require legislation banning collusion among unions, which, in the light of previous conclusions regarding inter-union cooperation, is not recommended. Also, allowing management refusal to negotiate with "mixed" union bargaining teams would conceivably result in more union attempts to obtain certification of multi-union bargaining units. Appropriate public policy regarding such certifications has already been examined.

Employer Cooperation in Collective Bargaining

There are indications that increasing interest

in cooperative arrangements for collective bargaining purposes is being shown by employers as well as unions. Furthermore, there are certain similarities between employer and union cooperation. The primary objective of both is to increase relative bargaining power. Both employer and union arrangements for cooperation affect the formal or informal structure of collective bargaining and are affected by public policy. As is the case with unions, cooperation among employers can take a number of forms, which vary in the degree of cooperation involved and the formality of the arrangements. Finally, employer cooperation per se is not new; some multi-employer bargaining units, for example, have existed for many years. But during the past decade there appears to have been some experimentation with new methods of cooperation and an increasing willingness to utilize at least some forms of cooperation, both old and new.

In the following discussion attention is focused on the major forms of employer cooperation, the circumstances which promote their use, and the impact of employer cooperation on the structure of bargaining units. Public policies in Canada and the U.S. which pertain specifically to the various forms of cooperation are also examined. There is in addition an examination of evidence

and hypothesizing regarding trends in the use of cooperative arrangements by employers. Finally, an attempt is made to evaluate employer cooperation and to examine the broad implications of this evaluation for public policy toward this aspect of bargaining structure.

While most of the literature referred to in this section deals with employer cooperation in the U.S., the analysis it contains is judged to be relevant to Canada as well.

Coordination of bargaining positions

Arrangements for coordinating bargaining positions.--There are several types of arrangements by which coordination of bargaining positions among employers may be achieved. The most formalized of these is a certified multi-employer bargaining unit. Slightly less formalized, because the element of certification is lacking, is an actual multi-employer unit created by mutual consent among employers and union rather than pursuant to a Labour Relations Board decision. In either case employers negotiate jointly and a single master agreement is applicable to all employers within the unit. The agreement may cover all relevant matters or leave some for supplementary agreements to be negotiated on a company-wide or plant-wide basis. In the

latter case the structure of bargaining is composed of a combination of multi- and single-employer bargaining units. A slight variant of multi-employer bargaining as defined above is what McPherson has termed "joint bargaining." Under this arrangement a single bargaining team representing a group of employers negotiates terms which are embodied in separate but uniform company- or plant-wide agreements.²¹ For purposes of analyzing bargaining structure, however, joint bargaining may, for practical purposes, be regarded as synonymous with multi-employer bargaining. All other things being equal, the creation of multi-employer units results in fewer but larger bargaining units and increased centralization of decision making in collective bargaining.²²

The conditions which promote formal multi-employer bargaining and the legislation and policies and practices of Labour Relations Boards in Canada and the U.S. are examined in detail elsewhere in this study, and therefore need not be dealt with here. It will only be noted that due to differences in the policies and practices of Labour Relations Boards in the U.S. and Canada, and Canada's compulsory conciliation legislation which hampers the creation of multi-employer bargaining units

extending across provincial boundaries, the conclusion may be drawn that, in general, it is more difficult to establish multi-employer bargaining units in Canada than in the U.S.

Less formalized than multi-employer bargaining, but with a generally similar impact on bargaining structure, is what McPherson has termed "parallel bargaining."²³ Under this arrangement employers engage in separate negotiations--either company- or plant-wide--but jointly determine bargaining objectives, proposals, and maximum concessions. If the cooperating employers adhere strictly to the bargaining positions and tactics upon which they have jointly decided, the structural distinction between joint bargaining and multi-employer bargaining may be more apparent than real. Strict adherence results in an informal multi-employer bargaining unit, despite the continued existence of formal single-employer units. It is probable, however, that in some cases maintaining employer unity would be more difficult if negotiations were separate rather than joint. Separate negotiations increase the administrative difficulties of achieving effective coordination, and it seems reasonable to suppose that employer groups would tend to have less cohesion under parallel bargaining

than in formal multi-employer bargaining. Thus, the effect of parallel bargaining on the informal structure of collective bargaining depends on the degree of unity which the cooperating employers manage to attain.

A degree of cooperation among employers may also be attained by the inter-firm exchange of information regarding contract clauses, wage rates, and other data relevant to negotiations even without any agreement to coordinate bargaining efforts. While each employer retains freedom of action in negotiations, knowledge of bargaining developments elsewhere in the industry or labour market is likely to result in a degree of informal and perhaps tacit coordination which would not be attained in the absence of such an information exchange. The implications for bargaining structure would be similar to those of parallel bargaining: a tendency toward creating an informal multi-employer bargaining unit composed of a number of formal, single-employer units.

Finally, brief mention should be made of pattern bargaining, in which a leading firm in an industry or labour market negotiates a contract which serves as a model for other firms. While pattern bargaining per se is not a form of bargaining coordination--an additional requirement would be cooperation between

pattern setters and followers--it resembles coordination in that negotiations conducted by individual firms are no longer independent of one another. Where pattern-setting agreements are closely adhered to by the followers, the uniformity of the agreements reached in the nominally separate negotiations makes pattern bargaining resemble multi-employer bargaining. In such cases the key structural distinction between pattern bargaining and a multi-employer bargaining unit is that pattern followers, unlike members of a multi-employer unit, are not formally represented in the key negotiation.

Unlike the case of certified multi-employer bargaining units, Labour Relations Boards have no direct control over parallel bargaining, the exchange of information among employers, pattern bargaining, or even the creation of actual but uncertified multi-employer units. None of these arrangements requires board certification. It follows, then, that Labour Relations Boards have only limited direct powers to influence the changes in the structure of bargaining which emerge through the development of employer arrangements for coordinating their bargaining efforts. (Parenthetically, it might be added that with the exception of their veto

power they exercise over the creation of uncertified actual multi-employer units, which require their agreement, unions also have no direct powers to affect arrangements for coordination. Through a test of strength they may break a united front created by employers by means of parallel bargaining, exchange of information, or pattern-following; but they cannot prevent the creation of a united front by these methods.)

Indirectly, however, Labour Relations Boards may exert some influence over the various types of arrangements for coordinating employer bargaining positions via their policies and practices regarding certification of multi-employer bargaining units. Where there exists a strong desire among employers to coordinate their bargaining efforts, legislation and board policies and practices which make it difficult to obtain certification for multi-employer units may promote the use of those arrangements for cooperation which do not require certification. The likely results would be greater changes in the informal structure of bargaining than in the more visible formal structure. A permissive policy toward certifying multi-employer units, however, would tend to promote this method of attaining coordination at the expense of the less formalized methods.

Canada's compulsory conciliation provisions, while hampering the creation of inter-provincial multi-employer bargaining units, would appear to be somewhat less of a deterrent to parallel bargaining, the exchange of information among employers, and pattern bargaining, even though these arrangements extended across provincial lines. A possible exception might be situations in which employers in several provinces would consider the concerted use of lockouts as a part of their coordinated bargaining efforts. Other arrangements for mutual assistance during labour disputes are available to employers, however--arrangements which are not subject to the restrictions of compulsory conciliation provisions. These arrangements, and their implications for the structure of bargaining, are examined below. First, however, attention will be turned to trends in the use of the techniques of coordination among employers which already have been examined.

Trends in employer coordination of bargaining positions.--The development during recent years of formal nation-wide bargaining in the U.S. basic steel and over-the road trucking industries raises the question of whether there is emerging a trend toward increased multi-employer bargaining in industries where, to date, it has been

relatively rare. Industrial relations experts are not unanimous in their conclusions regarding future developments. Rehmus summarizes one viewpoint in stating that in industries characterized by relatively small firms operating in local markets, where the practice has been most common, continued expansion of multi-employer bargaining can be expected, but that the arguments for multi-employer bargaining have had, and will continue to have, "less force in our major heavy industries."²⁴ The following statement regarding industry-wide bargaining is an elaboration of this viewpoint:

The pressures toward substantial increases in the amount of industry-wide bargaining.....do not appear great. In those industries where industry-wide bargaining now exists, however, both labor and management (with extremely limited exceptions) support it strongly. They believe it is necessary to preserve a rational system of industrial relations.²⁵

Rehmus concludes that where multi-employer bargaining has been established in major industries such as basic steel ".....special circumstances are ordinarily present," adding that "the limited extent of these kinds of special conditions do not appear to presage more (multi-employer) bargaining in other major industries."²⁶

Rehmus' conclusion that multi-employer bargaining is likely to remain the exception rather than the

rule in major manufacturing industries is based on considerations of economics and industrial relations rather than legislation, policies, and practices regarding the certification of multi-employer bargaining units. In Canada, this conclusion would be reinforced by the difficulty of obtaining certification for multi-employer units and the obstacles to multi-employer bargaining created by compulsory conciliation provisions.

It must be emphasized, however, that Rehmus represents only one point of view. Another viewpoint is represented by Kahn, who argues that increasing cooperation among employers by means other than multi-employer bargaining units will eventually lead to the formation of such units.²⁷ Like Rehmus, Kahn bases his analysis on considerations of economics and industrial relations rather than certification practices and policies. In the light of Kahn's analysis, it would appear that in Canada the barriers to the formation of multi-employer bargaining units hinder the natural evolution of the structure of bargaining units. Because it is related to employer arrangements for mutual assistance during strikes, a more detailed examination of the Kahn analysis is reserved for the following section, in which such arrangements are discussed at some length.

While they may question the spread of formal multi-employer bargaining into new areas of the economy, many industrial relations experts see indications of a long-term trend toward increasing cooperation among employers by means other than formal joint negotiations, such as parallel bargaining and exchanging information. Rehms, for example, notes that while collective bargaining in mass production industries with the exception of steel, tends to be on a single-company basis, "informal cooperative arrangements of one kind or another may exist among employers in the larger firms."²⁸ Such arrangements, he concludes, are motivated by the interdependence of settlements in industries dominated by a relatively small number of large firms. Each firm is aware that a costly settlement by one will have to be met by the others. The arrangements are typically informal understandings, with much leeway for independent action by individual firms.²⁹ Pierson concludes that while there are mixed and conflicting short-run circumstances, the evidence, although sketchy, indicates a longer-run trend toward greater employer unity in automobiles, steel, airlines, and similarly placed industries.³⁰ In his supporting argument he notes that pattern bargaining has been common in mass production industries, and

there is a tendency over time for following the leader to evolve into working with the leader (or on him).

(For Pierson's full argument, see his article, pp. 625-6.) Thus, there are indications that even in the absence of formal multi-employer bargaining, key decisions are being made to an increasing extent on a multi-employer basis even where bargaining is nominally on an individual-company basis.

Mutual assistance during strikes

Employer cooperation in collective bargaining may extend beyond the coordination of negotiations and include arrangements for mutual assistance during strikes. A major objective of such arrangements is to effectively counter union "whipsawing" tactics, under which employers in a particular industry are struck one (or a few) at a time. Such selective strikes place maximum pressure on the struck employer because he faces the possibility of losing business to rivals who are still operating. On the other hand, it reduces the burden of a strike on the union, since those members still working can contribute financial support to their fellow members who are on strike. The major categories of anti-whipsawing tactics are the multi-employer lockout and the provision of financial assistance to struck employers. The utilization

of either of these tactics has implications for the structure of bargaining.

"One-down-all-down;" the multi-employer
lockout.--to reduce the effectiveness of union whipsawing, employers may agree that if one is struck the others will respond with a lockout. This eases the pressure on the struck employer, since the shutdown of his competitors' operations minimizes the danger that he will lose business to them. Furthermore, by throwing more union members out of work the multi-employer lockout reduces the union's ability to subsidize strikers, thereby reducing their ability to endure a long strike. Thus, an understanding among an industry's employers that a strike against one will be countered by a lockout by the others increases the bargaining power of each member of the group relative to the union.

Adopting the multi-employer lockout as a defence against the selective strike implies a multi-employer bargaining unit, either formal or informal. It is difficult to envision a mutual agreement regarding lockouts without an additional agreement to coordinate bargaining policies and tactics, whether this is achieved by formal multi-employer bargaining or less formal cooperative arrangements among employers who continue

to negotiate nominally on a company-wide or plant-wide basis. Thus, increased use of multi-employer lockouts would coincide with larger bargaining units (formal or informal) and increased centralization of decision making in collective bargaining.

Canadian labour legislation places certain restrictions on the use of multi-employer lockouts. In Alberta and British Columbia, where an agreement is signed by more than one employer a majority vote by the signatory employers is required as a condition for a lawful multi-employer lockout. Ten Labour Relations Acts prohibit lockouts during the term of an agreement. Furthermore, compulsory conciliation provisions make a coordinated inter-provincial multi-employer lockout difficult to achieve. The compulsory conciliation requirements of each affected province would have to be met before a lockout could take place within its borders.

In the U.S., questions of legality long restricted the use of multi-employer lockouts. In recent years it has been established that such lockouts are lawful if the participating employers are members of a formal employer association which engages in multi-employer bargaining. The legality of multi-employer lockouts when used by firms maintaining less formal

cooperative arrangements (such as parallel bargaining) is still in doubt at this time.

Aside from questions of legality, there may be other factors which tend to restrict the use of multi-employer lockouts, both in Canada and the U.S. McPherson has noted that many employers fear the possibility ".....that a lockout would have an adverse effect both on public opinion and employee relations," concluding that ".....it seems unlikely that strike aid will take this form."³¹ If the multi-employer lockout is an unpalatable way of countering selective strikes, there remains the alternative of providing financial assistance to a member of an employer coalition who has been struck.

Mutual financial assistance.--If multi-employer lockouts are eschewed, the position of an employer hit by a selective strike can be strengthened if he receives financial assistance from the non-struck employers with whom he is allied. Arrangements to provide such assistance can take various forms. The non-struck employers may pay some percentage of their profits or income to the struck employer. A variation of this is the strike fund which is created in advance through employer contributions, and is then paid to the struck employer. A related tactic is one whereby the non-struck employers

will handle production or shipping for the account of the struck employer.

While arrangements for mutual financial assistance do not require formal multi-bargaining, they do, like the multi-employer lockout, imply a high degree of cooperation among employers in all aspects of bargaining. Such arrangements imply movement toward at least an informal multi-employer unit.

In contrast to the multi-employer lockout, there appear to be no direct legal restrictions on mutual financial assistance plans in either Canada or the U.S. For Canadian employers financial assistance has the special advantage that arrangements for providing aid across provincial boundaries are not hampered by compulsory conciliation requirements. Unlike the case of multi-employer lockouts, financial assistance to an employer in another province can be provided whenever other employees in the group wish, and without any prior process involving governmental agencies.

Plans for mutual financial assistance have not yet become widespread in Canada and the U.S., and whether they will do so is at present a matter of conjecture. Kahn has concluded that such plans will spread in the U.S. unless restricted by law, with each industry making

special arrangements to fit its particular needs.³² Furthermore, such plans will be developed, initially at least, within the context of single-employer bargaining. While focusing on the U.S., Kahn's arguments regarding the rationale for financial assistance plans would seem to be applicable to Canadian employers as well. The motivation for increased utilization of financial assistance stems from its advantages over (1) single-employer bargaining without assistance arrangements, which allows the union to use selective strikes to maximum effect, and (2) formal industry-wide bargaining, which increases the likelihood that in the event of a strike all employers will be shut down simultaneously. Regarding the financial assistance plan developed by U.S. airlines, Kahn states that "Although the (assistance) pact is consistent with the practice of single-carrier bargaining, it appears to shift the bargaining strength toward the employers even more than would result from industry-wide bargaining arrangements."³³ This conclusion is based on the fact that, unlike the case of an industry-wide strike, the firms shut down continue to receive income, which increases their ability to withstand a strike. While Kahn does not say so explicitly, his argument would also seem to imply that financial assistance is a more

effective device than multi-employer lockouts in increasing an employer's ability to withstand strikes.

But is a system of single-employer bargaining coupled with financial assistance plans viable in the longer run? Or will such plans promote important changes in the formal structure of bargaining? Kahn argues that if an industry characterized by single-employer bargaining inaugurates a plan for mutual financial assistance the response of the union(s) involved may well be to strive for industry-wide bargaining, since financial assistance significantly reduces the union advantage in striking employers singly. The following statement, while dealing specifically with the U.S. airlines industry, is of relevance to all industries in which employers attempt to develop arrangements for financial assistance while maintaining formal single-employer bargaining:

(The unions') response is most likely to include a new receptivity to industry-wide bargaining, since there can be no diversion of "struck work" if all parties to the pact are (shut down). Industry-wide bargaining is far less favorable to the unions than the previous practice of single-carrier bargaining in the absence of the pact, and the unions certainly do not relish the additional government intervention that is likely to accompany any industry-wide stoppage. But industry-wide bargaining is so much more favorable to union bargaining power than single-carrier bargaining under the pact that I believe the unions will not be able to resist its temptations.³⁴

Furthermore, industry-wide bargaining where two or more unions have bargaining rights is likely to promote inter-union cooperation.

Another development among unions, especially if industry-wide bargaining (or its near equivalent) materializes, is likely to be a degree of cooperation on bargaining tactics. An industry wide strike by one union will idle many members of the other unions. The other unions might resent the strike, unless they could take advantage of the same hiatus in operations to make some gains for their own members.³⁵

In short, then, the increasing utilization of financial assistance plans would tend to promote larger-scale, multi-employer bargaining units and greater centralization of decision-making in collective bargaining. Kahn summarizes the likely results of financial assistance plans as follows:

Such employer arrangements will tend to raise the locus of management decision-making in collective bargaining to the level at which the strike benefits plan is administered--since participants will be anxious to qualify for benefits--just as national union strike funds have tended to increase the voice of the national union in local union bargaining policies. Organized labor, in turn, may be expected to insist on conducting bargaining at the level where decisions on the application of these employer funds are made, in addition to placing more emphasis on development of their own "war chests." Thus, if the airlines' mutual aid pact in fact sets an attractive example for employers in other industries, the other forces in our society that have been encouraging larger-scale collective bargaining will have been greatly reinforced.³⁶

Employer cooperation: evaluation and
implications for public policy

It is difficult to make broad generalizations regarding the desirability of employer cooperation. How cooperation affects collective bargaining, union-management relations, and the public interest is likely to vary according to the particular circumstances of individual situations. Certainly, employer cooperation promotes the formation of larger bargaining units, either formal or informal, and increased centralization of decision making in collective bargaining. But as discussed in greater detail elsewhere in this study, such trends can have both desirable and undesirable consequences, and the balance between them can vary with particular situations. In some cases employer cooperation represents an attempt to build countervailing power against the power unions gain from employing the selective strike; where this is the case, maintaining a reasonable balance of bargaining power may require such cooperation. In other situations employer cooperation may constitute original power, and unions may be forced to adopt counter measures to maintain the balance of bargaining power. Furthermore, the effects of employer cooperation can vary according to the quality of the leadership within the

employer coalition. Regarding the wide range of possible consequences which may flow from employer cooperation in collective bargaining, it would be difficult to improve upon the following summary by Pierson:

.....like most other instruments of collective bargaining (employer cooperation) can play either a highly destructive or constructive role. Under some circumstances, and in some hands, it can accentuate all the worst features of modern labor relations; under other circumstances, and in other hands, it can accentuate the best.

The ultimate test which seems to me must be applied to employer cooperation (or to any other development in collective bargaining, for that matter) is whether it helps resolve a given industry's problems in a broadly acceptable way. Where it is used as a device to protect established interests, prevent change, and exploit some narrow, short-run advantage, it merits only condemnation. Where it is used to implement improvements and develop human and physical resources in ways that are generally beneficial to the groups at interest and to society as a whole, it deserves support.

Put candidly, I rather doubt that cooperation among managements will raise the sights of an industry much above the level found in any one of its more influential member firms. Leadership on the employer side of the bargaining table will still largely depend on the imagination and resourcefulness of one or two managements in a given field. The contribution of employer cooperation will probably come in providing a more effective forum for exercising this type of leadership and for implementing suggested courses of action. The prior question to consider.....is where these ideas are coming from and whether they are worthy of general employer support.³⁷

The diversity in the possible results of employer cooperation in collective bargaining would

argue against a public policy with a built-in bias against cooperation. Rather, public policy should allow flexibility in the development of such arrangements, restricting them only where it is clear that such arrangements will be detrimental to the attainment of some well-defined policy goal(s). More specifically, it is recommended that the biases against the certification of multi-employer bargaining units which currently exist in Canadian labour relations laws and the policies and practices of Canadian Labour Relations Boards be removed. Boards should be allowed a high degree of flexibility in certifying such units and, as in the case of multi-union certifications, should judge each petition on its merits with no prior disposition to reject petitions for multi-employer bargaining units. Furthermore, the barrier to inter-provincial multi-employer bargaining units created by current legislative provisions for compulsory conciliation should be removed. It is recommended that such provisions be repealed or, at minimum, effective arrangements be made for compulsory conciliation on an inter-provincial basis.

FOOTNOTES

1. "Coalition bargaining," "joint bargaining," and "multi-union bargaining" are terms often used to denote such cooperation.
2. "Trade Union Alliances for Collective Bargaining," Labor Issues in the Mid-60's (Washington, U.S. Department of Labor, Bureau of Labor Statistics, n.d.), p. 28.
3. Frederick C. Klein, "New Labor Linkup: Industrial Unions Form Joint Groups to Boost Power at Negotiations," The Wall Street Journal, February 15, 1966, p. 1.
4. Klein, op. cit., p. 1.
5. Ibid. Italics not in original.
6. Ibid.
7. There are exceptions, however, as in cases where the striking union shuts down a key plant which is a vital link in the firm's entire production process or establishes picket lines which are honored by the other unions which negotiate with the employer.
8. Klein, op. cit., p. 1.
9. Letter to The Wall Street Journal, July 21, 1967.
10. Klein, op. cit., p. 1.
11. "Trade Union Alliances for Collective Bargaining," op. cit., p. 29.
12. Ibid., p. 28.
13. Klein, op. cit., p. 1.
14. Ibid.
15. Ibid.
16. Canada Department of Labour, Legislation Branch, Labour Relations in Canada, 1967, p. 24.

17. Ibid., pp. 23-24, 27.
18. Conversation with Mr. Emil Farkas, NLRB Regional Attorney, Cincinnati, Ohio, August 3, 1967.
19. H. D. Woods and Sylvia Ostry, Labour Policy and Labour Economics in Canada (Toronto: McMillan of Canada, 1962), p. 271.
20. Ibid. Italics not in original.
21. William H. McPherson, "Cooperation Among Auto Managements in Collective Bargaining," Labor Law Journal, XI (July, 1960), p. 607.
22. If some issues are covered in supplementary agreements, the conclusion regarding fewer but larger bargaining units would apply only to those issues covered by the master agreement.
23. McPherson, op. cit.
24. Charles M. Rehms, "Multi-Employer Bargaining," Current History, XLVIII (August, 1965), p. 92.
25. Ibid., p. 112.
26. Ibid., pp. 96 and 112. For examples of "special circumstances," see p. 112.
27. Mark L. Kahn, "Mutual Strike Aid on the Airlines," Labor Law Journal, XI (July, 1960), pp. 597-606.
28. Ibid., p. 93.
29. Ibid., p. 96. Rehms also notes that fear of anti-trust prosecutions makes the managements of some large firms leery of more formal cooperation, which might create "substantial difficulties for little real gain" (p. 96).
30. Frank C. Pierson, "Cooperation Among Managements in Collective Bargaining," Labor Law Journal, XI (July, 1960), p. 625. Italics not in original.
31. William H. McPherson, op. cit., p. 613.
32. Kahn, op. cit., p. 604.

33. Ibid., p. 603.
34. Ibid., p. 604.
35. Ibid., p. 604.
36. Ibid., p. 143.
37. Pierson, op. cit.

THE STRUCTURE OF BARGAINING UNITS, CENTRALIZATION OF
DECISION-MAKING WITHIN UNIONS,
AND SOME INTERNAL UNION PROBLEMS

The labour movements in Canada and the U.S. are currently undergoing intensive scrutiny, both from within and without. Some important questions are being raised and discussed at length. How well are unions serving their members? Are there adequate communications between top-echelon leaders and the rank-and-file or is there an ever-widening gulf between the two groups? Are unions "democratic enough?" Are members able to participate effectively in decision-making, or can they only abide by the decisions made for them by well-entrenched leaders?

An attempt to provide answers to these questions will be beyond the scope of this study. Indeed, it may be argued that there are no simple answers to these questions. There are thousands of union organizations in Canada and the U.S., and conditions vary significantly among these organizations. Furthermore, decisions as to whether unions are "democratic enough" or "effective" in serving their members cannot be made according to objective and measurable criteria; rather they must essentially remain to a large extent value judgments.

It is the purpose of this Chapter to examine the relationship between union democracy and effectiveness in serving the membership on the one hand, and the structure of bargaining and the degree of centralization in union decision-making on the other. As will be shown, the structure of bargaining and centralization of decision-making are in turn closely related. It is not claimed, of course, that bargaining structure and the locus of decision making power are the only variables which affect union democracy

and the ability of unions to serve their members effectively. But there is a relationship, and it is upon this relationship that attention will be focused.

Centralization of Decision-Making and the Structuring of Collective Bargaining

During the past three decades there has been a general trend toward increasing centralization of decision-making and control within the labor movement. To an increasing extent the locus of decision-making in collective bargaining has been the national union or other supra-local body rather than the local union. This trend has been apparent not only among industrial unions centered in the mass production industries -- unions in which national headquarters have traditionally exercised relatively strong control over affiliated units -- but also among many non-factory unions which have had a stronger tradition of local autonomy.¹ There are still variations in the degree of [centralization] with relative decentralization most common among unions dealing with employers who operate in local product markets. There appears to be widespread agreement, however, that -- in general -- the role of local unions in negotiating agreements has diminished relative to those of the national unions and intermediate bodies, and that the locals have increasingly become agencies specializing in contract administration and grievance processing. Even in these activities, however, there appears to be increasing participation by supra-local bodies.

The creation of larger bargaining units is both a cause and an effect of the trend toward centralization. It is a cause in that multi-plant and multi-employer bargaining often results in

decisions being made, and bargaining being conducted, by the ^{officials} of supra-local union organizations.² It is an effect in that forces promoting centralization may provide a rationale for the enlargement of bargaining units.

Forces Promoting Centralization of Decision-Making in Unions

The forces which promote centralization of decision-making within unions arise from the characteristics of product markets, management organization, and collective bargaining and from certain political pressures within the national union. Unions have long pursued the goal of "taking wages out of competition" by standardizing rates among all firms competing in a particular product market.³ Without a coordinated wage policy for all employers, firms obtaining relatively favorable wage settlements could obtain a cost advantage over their competitors, and wages would be an element of market competition. Wage standardization, on the other hand, confines competition to other elements, such as efficiency and product quality. Further impetus for wage standardization may come from rank-and-file membership pressures for "equal-pay-for-equal-work." For an industrial union this necessitates an attempt to standardize wage rates throughout its industry, regardless of the location of individual plants and firms; for a craft union it may necessitate equalizing rates for all employers in a particular labor market. If product and labor markets are regional or national in scope, some form of centraliz-^{ation} control vested in a supra-local body is required if the coordinated wage policy necessary for standardization is to be attained.

Regarding management organization, centralization of decision-making in unions is sometimes a response to centralized control over industrial relations in large, multi-plant corporations. Collective bargaining is most effective when negotiators on both sides have the power to make a contract without first consulting superiors. Where such circumstances do not exist the result may be "...unnecessary delay and in some cases avoidable strikes."⁴ Thus, centralized control over collective bargaining in large firms has prompted unions to press for company-wide bargaining units so they can negotiate with those who establish company-wide bargaining policies. This in turn has led to greater participation in bargaining by supra-local union bodies, and a correspondingly smaller role in decision-making for the local union.⁵

Changes in the characteristics of collective bargaining are also promoting increased centralization of decision-making within unions. To an increasing extent, statistics and economic analysis are being used to support bargaining positions. Lester notes that the bargaining process is becoming increasingly "...factual, statistical and full of economic reasoning."⁶ Furthermore, collective bargaining issues are growing in number and complexity. Whereas at one time there were few issues other than money wages, collective bargaining today ranges over such topics as pension plans, insurance programs, supplemental unemployment benefits, job evaluation, and programs for dealing with the labor-displacement effects of technological change. Finally, legal regulation of industrial relations has become increasingly

pervasive and complex. All of these developments require greater utilization of expert specialists who are typically found on the staffs of national unions rather than affiliated locals. The need for expertise which only the national union can provide has enhanced its role as a decision-making center and reduced that of affiliated locals.

Bargaining Unit Certification and Centralization of Decision-Making in Unions

If centralization of decision-making in unions is related to the structure of bargaining units, it is clear that the policies and practices of Labour Relations Boards regarding the certification of bargaining units can affect the degree of centralization. A bias toward certifying small units tends to slow the trend toward increased centralization while willingness to certify multi-plant and multi-employer units tends to promote it. The reluctance of Canadian Boards, as compared with the NLRB, to certify multi-plant and multi-employer bargaining units and the inability to obtain certified inter-provincial bargaining units in those industries under provincial jurisdiction, thus retards the trend toward centralized decision-making in Canadian unions. Additional retardation is provided by the difficulties in establishing actual (though uncertified) inter-provincial bargaining units which result from compulsory conciliation requirements coupled with provincial jurisdiction. Thus, as compared with the U.S., there is less pressure for centralized unions decision-making stemming from large-scale bargaining units, and the other forces promoting centralization are less able to manifest themselves in the form of larger certified or actual bargaining units.

But while Board policies and practices may inhibit the trend toward centralized union decision-making, it is doubtful that they can, in themselves, halt it. In the first place, there is little to impede the voluntary formation of actual bargaining units larger than certified ones within a province. Second, and more important, centralized control can be achieved by means other than large-scale bargaining units.

A variety of devices enable supra-local union bodies to make and implement decisions even though collective bargaining continues to be conducted formally, at least, - on a localized basis. For example, national unions may stipulate minimum terms for which each local may settle or require approval of the national before agreements negotiated by locals can take effect. In many instances a representative of the national participates in local negotiations, in part to insure that the resulting agreement conforms to national union standards. Strikes by locals may require approval by the national, a power enhanced if strike funds are held and disbursed by the national. Under pattern bargaining the national may insist that the key bargain serve as a model for agreements negotiated in other bargaining units. It may be more difficult administratively to exercise effective centralized control utilizing these devices than if there were fewer negotiations involving larger bargaining units. But utilizing these devices results in the same general tendency as the creation of formal certified or actual multi-plant and multi-employer bargaining units: transfer of at least part of the decision-making function and control over collective bargaining from the local unions to supra-local bodies. In terms of bargaining units structure,

the result is the creation of larger informal bargaining units even though collective bargaining still takes place nominally on a small-unit basis. It may be concluded that even if Labour Relations Boards should desire to restrict centralization of decision-making and control in unions, their ability to do so, given their present powers, is limited.

Centralization and Some Internal Problems of Unions

While there are significant pressures for larger Bargaining Units and centralized union control over collective bargaining, most students of industrial relations recognize that centralization may intensify some internal union problems. In this section the implications of centralization for union democracy and the ability of unions to serve their members effectively are examined.

Centralization and Union Democracy

Regarding democracy, the key issue is the extent to which centralization, and particularly the development of larger bargaining units, formal or informal, reduces the ability of rank-and-file union members to participate in decision making. As Sayles and Strauss have pointed out, local bargaining does not guarantee effective membership participation in decision making, particularly where the local union has a large membership or covers a large geographic area.⁷ But it is generally agreed that larger bargaining units and centralized control over bargaining decisions make it more difficult for individual members to participate in

decision-making by increasing the distance between them and the decision makers. Inability to participate effectively in decision making also may contribute to the often discussed apathy among union members. In general, then, democracy, in the sense that members are able to participate effectively in decision-making is greater, ceteris paribus, if negotiations are local in scope and the local union has a high degree of autonomy. As Kerr has stated;

Local unions, by their inherent nature, clearly can provide more opportunities than can national unions for democratic participation by their members. Consequently, the more autonomy there is at the local level, the greater the democratic life of the union movements is likely to be. The big drop in democratic participation comes in the movement from the one plant to the multi-plant local or the district union. In the one plant, rival leaders can become known and be effective, issues can be discussed on a face-to-face basis, and democracy can be effective. The multi-plant unit serves the interests of the entrenched leadership in a most emphatic way. The one-plant local with real authority is the most democratic entity in the trade union movement.⁸

That at least some national unions are concerned about the difficulties of membership participation caused by large bargaining units and centralization of authority is evidenced by efforts to insure effective membership representation in decision making. While direct participation is not possible if decision-making authority is vested in a supra-local body, various means have been devised to enable the wishes of the membership to be made known to policy-making bodies. Direct democracy is incompatible with large bargaining units and centralized decision making; the creation of effective representative democracy under such

circumstances is a test of the labor movement's ingenuity and dedication to the democratic ideal.

Regarding the bargaining unit certification policies and practices of Labour Relations Boards, promoters of union democracy would argue for certification of small-scale bargain-^{ing} units where all other things are equal. But all other things^{ing} are seldom equal. In numerous situations there exist compelling reasons for certifying large-scale bargaining units. In such situations Boards should not hesitate to certify the larger units despite the potential difficulties which such units may pose for membership participation in decision-making. The key to maintaining democratic unions is the development of effective arrangements for membership representation-- not direct participation -- in decision-making. It is not the fragmentation of bargaining units. Hopefully, the labor movement will take the lead in developing such arrangements. If government intervention is needed it should be in the form of special legislation, such as the U.S. Landrum-Griffin Act, rather than a predisposition of Labour Relations Boards to certify small bargaining units.

Effectiveness in Serving Members

During recent years a number of writers have questioned the effectiveness of unions in serving the interests of their members. They point to several pieces of evidence which indicate that membership interests are not being served as well as they might be. There is a general impression of widespread rank-and-file dissatisfaction with the accomplish-^{ment} of union leaders at the bargaining table.⁹ Dissatisfaction^{has}

been manifested in the ouster, through elections, of a number of national union presidents, such as has occurred in International Union of Electrical Workers, the United Steel Workers, and the United Rubber Workers. It has been manifested in the sharp increase in the incidence of contract rejections by the rank-and-file, a widely publicized example of which is the repudiation of the airline machinists of a contract negotiated by their national union in the summer of 1966. It has also been manifested in a rising rate of contract rejections by membership vote. In the U.S. The Federal Mediation and Conciliation Service estimates that during the Fiscal Year ending June 30, 1967, members voted to reject contracts in 14% of all cases in which federal mediators participated. Such a rate of rejections was unheard of as late as five years ago.¹⁰ Finally, there is evidence of dissatisfaction among specific groups, within large industrial unions. The current internal problems of the United Auto Workers are a prime example of discontent among craft groups within an industrial union.

The task of serving membership interests effectively may be divided into three aspects. First, the desires of the rank-and-file must be known to union leaders. How large an increase in compensation do they expect (and how much can they be convinced to settle for)? What are their expectations regarding composition of a "package" of benefits? To what extent are they willing to sacrifice higher pay for job security provisions? Second, union leaders must consider their ability to satisfy membership expectations at the

bargaining table, that is, the union's relative bargaining power. Third, leaders must often decide whose interests shall be served. This is a major decision in a union comprising a variety of interest groups, some of which may be in conflict. For example, younger members may prefer the major portion of any benefits increase to be in the form of higher wages, while older members may emphasize improvements in the pension plan. Some members may prefer a smaller money wage increase in return for more paid holidays, while others do not. Numerous other examples of intra-union conflicts of interests could be cited. Whose interests are given preference in negotiations will be determined by intra-union distribution of power among various interest groups. It is often a stern test of union leadership to reconcile divergent interests at the bargaining table and thereby maintain intra-union harmony.

Bargaining structure and centralized decision making within the union are closely related to all three aspects of serving membership interests. The larger is the bargaining unit and the greater is the degree of centralization in decision making, the more difficult it may be for decision makers to know the desires of the membership. This is essentially a problem of communication; the greater is the distance between the rank-and-file and decision makers, the more difficult it is to communicate effectively. Local bargaining with a high degree of autonomy for local unions enables personal contact between members and leaders, which

is the most effective means of communication. A local leader in direct, daily contact with his members is likely to be well aware of their attitudes and expectations. But when key decisions which affect thousands of workers are made by higher-echelon union officials who may be hundreds of miles away from their members, as may be the case in multi-plant or multi-employer bargaining or when strong centralized control is exercised over nominally local bargaining, face-to-face communication becomes impossible. Developing effective channels of communication presents a major challenge to unions which represent large bargaining units or exercise centralized control over local bargaining.¹¹

While the communication problem may be intensified, in some situations large bargaining units and centralized union control over bargaining can increase the union's relative bargaining power, hence its ability to obtain gains for its members. Such might be the case, for example, where company-wide or coordinated local bargaining is substituted for uncoordinated local bargaining in a multiple-plant, single-product firm. In other situations, however, large bargaining units may reduce a union's relative bargaining power, as in the case of multi-employer units which reduce the ability of a strong union to "whipsaw" employers.

Regarding service rendered to members, the biggest problem which may be intensified by large bargaining units and centralized control is that of reconciling and serving the various and sometimes conflicting interests of subgroups within the union.

While there are exceptions, enlargement of the bargaining unit often tends to increase the diversity of interests within the unit. Workers in a particular plant, who share a similar background and problems, may be fairly unanimous regarding their objectives in negotiations. Workers in another plant in another part of the country may have quite different views. When the two plants comprise a single bargaining unit, or a common bargaining policy for both is established at national headquarters, the task of reconciling the differences in objectives may be formidable.

Centralized bargaining may also reduce the ability of minority groups with relatively little power within the union to obtain what they consider adequate attention to their interests. Beyond purely internal union considerations, the power of minority groups to make their views carry weight among higher-echelon decision makers is restricted by Labour Relations Board policies which make severance from larger bargaining units difficult. Finally, effectiveness of the threat of secession as a means of obtaining consideration by decision makers has been reduced by the decline in inter-union rivalry, the development of no-raiding pacts, and other restrictions on changes in affiliation by local unions, which have resulted from the ARL-CIO merger, all of which helped reduce the independence of action and bargaining power of locals within the national union.¹² Thus, there is the

possibility that centralized bargaining will result in neglect of special localized problems and the interests of particular groups of workers within the union.

It must be emphasized, however, that even under centralized bargaining there can still be a degree of flexibility in making special arrangements to suit particular local circumstances within the general framework of a broad agreement. Local flexibility is likely to be greater with coordinated bargaining by small bargaining units, but some flexibility is possible even in large units. For example, decision-making on some issues may be highly centralized while other issues are left to be determined locally, according to the wishes of the particular workers and management(s) involved. As Kasper has noted:

... the locus of decision-making tends to vary with the subject matter. For example, although the NLRB may certify Local A as the bargaining representative of workers at the St. Louis plant of the XYZ Steel Co. wage increases may, in fact, be negotiated at the industry level, plant grievances settled in accordance with corporate policy and informal agreements made within each department of the plant concerning work loads and personal time off.¹³

Furthermore, the inventiveness of unions and management may result in new types of arrangements which preserve the experienced advantages of centralized bargaining while increasing the extent of local self-determination. An example of such arrangements is "package bargaining," under which a compensation increase of a given monetary value is agreed upon for a large bargaining unit, but the composition of

the compensation package is, perhaps with some limitations, left to local discretion. In this way the compensation increase is uniform for all plants, firms, and workers covered by the master agreement -- a basic reason for centralized bargaining -- but workers in each subdivision of the bargaining unit can choose the composition of the pay package which suits them best.

There is the possibility, of course, that once a trend toward centralization in bargaining is established it may go beyond what is required for effective bargaining, and that further centralization may occur "for its own sake." As Sturmthal has noted, while some matters can be controlled only at higher levels of authority, there is the danger that centralized authority may extend to matters within the competence of local representatives. In such cases industry patterns may be applied with excessive rigidity and in unnecessary detail to local settlements.¹⁴ Some students of industrial relations, however, argue that excessive centralization, done for its own sake, is far from inevitable. Barbash, for example, concludes that in mass production unions, in which national headquarters have traditionally exerted strong control over contract negotiations, there has been a tendency toward creation of corporate or industry bodies which "can exercise a good deal of independence in the negotiation of agreements."¹⁵ Sturmthal, while noting the possibility of excessive centralization, believes that

important correctives to such a situation are to be found within the labor movement.

Perhaps the greatest strength of the American labor movement, however, lies in the development -- largely through the grievance procedure -- of effective local worker organization trained to make decisions and effect settlements with their own employer. There is some basis here for believing that if centralization of bargaining authority proceeds too far it will develop -- has in fact already developed in some quarters -- its own corrective in covert accomodation at the local level and, paradoxically, without necessarily weakening the ties between local and national representatives.

The structure of American industry guarantees that fragmented bargaining units would not be workable, but the ideology of self-control implemented by the training ground of the grievance procedure appears to offer some assurance that centralization of union authority will be contained within limits. It remains to be seen, however, how much this underlying tendency of local autonomy will control the impersonal price relationship the wage bargaining, as it has the more intimate social relationship of the work environment.¹⁶

In conclusion, it may be noted that maintaining the effectiveness of unions in serving membership interests where collective bargaining is highly centralized is to a large extent a problem of balancing of the rights of minority groups against those of majorities. While a number of means for adapting centralized bargaining to meet the desires of local groups have been noted, it appears likely that centralized bargaining necessitates some sacrifice of particular interests for the greater general good. But to what extent should particular interests be sacrificed? To what extent should independent action by minorities, pursuing their particular interests be allowed to hamper attainment of the objectives of the majority? Should craft minorities be allowed to secede from industrial unions and form their own bargaining units if the bargaining position

of the non-craft majority will be weakened as a result? Should a strategically placed minority group be able to shut down a plant to further its interests if the result is involuntary unemployment for the majority? These and many similar questions regarding majority and minority interests may be raised.

Regarding the bargaining unit certification policies and practices of Labour Relations Boards, the foregoing analysis presents some difficult problems but suggests no easy solutions. Adequate representation for minority groups should be considered in determining the appropriateness of a bargaining unit. But this consideration should not be overriding; adequate attention should also be given to the interests of the majority. Unfortunately there are no simple formulas which can be applied to achieve an appropriate balance between minority and majority interests. The concept of "appropriate balance" is itself unprecise, and there are honest differences of opinion as to the appropriate weights to be given to minority and majority interests. Furthermore, consideration might be given to implications of alternative bargaining units for union bargaining power, hence the ability of the union to obtain gains for members of the bargaining unit. For example, fragmentation of a multi-plant firm into single-plant bargaining units may appear to allow maximum consideration of the particular interests of the workers in each plant, yet may reduce the bargaining power of all by allowing the firm to play off one plant unit

against another. To compound the difficulties, the matters currently under discussion are only a few of the considerations involved in determining the appropriateness of bargaining units. As difficult as the problems may be, however, legislatures and Labour Relations Boards cannot afford to ignore them if the bargaining unit certification process is to be an effective instrument of public policy.

Perhaps what is needed most of all is flexibility. What must be avoided is the rigidity inherent in precise, pre-set formulas, such as automatically allowing craft severance upon majority vote of the craftsmen, blanket refusals to certify craft units, or on the banning of multi-plant or multi-employer bargaining units. Each case contains its own particular set of circumstances, and each case should be decided in light of its particular circumstances rather than according to rigid, pre-conceived approaches.

FOOTNOTES

1. Jack Barbash, Labor's Grass Roots, New York: Harper and Brothers, 1961, pp. 131, 136.
2. There are, however, some exceptions. For example, a local building trades union may still have primary responsibility for conducting negotiations of an association of local building contractors.
3. The fact that complete standardization may not be achieved, particularly in the short run, does not mean that unions fail to pursue the goal of standardization. It means only that standardization is not always easy to attain, particularly in nation-wide product markets with plants scattered throughout the country and operating in a number of labor markets with different general levels of wages.
4. Robert R. France, Union Decisions in Collective Bargaining, Princeton, New Jersey, Industrial Relations Section, Princeton University, 1955, p. 12.
5. Marton Estey, The Unions, New York, Harcourt, Brace and World, Inc., 1967, p. 64.
6. Richard A. Lester, As Unions Mature, Princeton, New Jersey, Princeton University Press, 1958, p. 24.
7. Leonard R. Sayles and George Strauss, The Local Union, New York, Harcourt, Brace and World, Inc., 1967, pp. 152-53.
8. Clark Kerr, Unions and Union Leaders of Their Own Choosing, Berkley, University of California Institute of Industrial Relations, 1958, p. 13.
9. See, for example, Murray J. Gort, "Labor's Rebellions Rank and File," Fortune, LXXIX (November, 1966), pp. 151-153.
10. The Wall Street Journal, August 30, 1967, p. 8.
11. Since communications are two-way, it is also arguable that large bargaining units and centralized control make it more difficult for higher-echelon union leaders to convince the rank-and-file that decisions made at the top should be accepted. This may be part of the explanation for the increasing incidence of contract rejections by members.
12. Richard A. Lester, op. cit. pp. 25-26.
13. Harischel Kasper, "The Size of the Bargaining Unit and the Locus of Union Power," Quarterly Review of Economics and Business, VI (Spring, 1966), p. 60.
14. Adolph F. Stumathal, Contemporary Collective Bargaining in Seven Countries, p. 307.
15. Jack Barbash, Labor's Grass Roots, (New York: Harper and Brothers, 1961), p. 136. Barbash cites a number of examples to support his conclusion.

16. Sturmthal, Op. Cit. p. 308.

CHAPTER VIII

MULTI-EMPLOYER BARGAINING

Multi-employer bargaining may be considered as collective bargaining by employers. In a multi-employer bargaining unit (MEBU) a single bargaining team represents all affiliated employers in negotiations. The result is uniform terms of agreement for these employers, either in the form of a master contract applicable to all or a series of uniform individual contracts.

Multi-employer bargaining units may be established by means of certification or, through mutual consent of the bargaining parties without the formality of certification. The majority of such units existing in Canada and the United States today were established by mutual consent and have not been certified by a labour relations board.

Multi-employer units vary significantly in their geographic coverage, falling roughly into three classifications: (1) city-wide or metropolitan, (2) regional, and (3) national. In much of the literature, multi-employer bargaining is often implicitly equated with national or industry-wide bargaining. True industry-wide bargaining, however, is relatively rare in Canada and the United States. The typical multi-employer bargaining unit is city-wide or regional in scope.

The discussion of multi-employer bargaining is divided into four major sections. In the first, the implications of multi-employer bargaining for the bargaining parties, unions and managements, are examined. The implications of this type of bargaining structure for the economy--i.e., the public interest--are examined in the second section. The third section contains recommendations regarding appropriate public policy toward multi-employer bargaining which are based on the preceding analyses. In the fourth section, Canadian and United States statutes and labour relations board policies and practices regarding the certification of multi-employer bargaining units are examined, compared, and evaluated.

Multi-Employer Bargaining and the Bargaining Parties

In this section numerous possible implications of multi-employer bargaining for unions and employers are examined. The possible effects of multi-employer bargaining on the balance of bargaining power are analyzed, and a number of potential benefits for both sides which may be derived from this type of bargaining structure are evaluated. There follows a discussion of some of the difficulties and problems which may arise in a multi-employer unit. Finally, there is a broad evaluation of

multi-employer bargaining from the viewpoint of the bargaining parties.

Multi-employer bargaining and bargaining power

The establishment of a multi-employer bargaining unit can significantly alter the balance of bargaining power, sometimes in favor of employers and at other times in favor of unions. Thus, pressures for multi-employer units may arise from ".... the efforts of employers in some situations and unions in others to augment their bargaining power."¹

Multi-employer bargaining may increase the bargaining power of employers, and hence provide them with an effective defensive tactic where the bargaining position of individual employers is weak relative to that of the union. Under single-employer bargaining, the union can select as its target the firm likely to grant maximum concessions, then use the settlement as a pattern, forcing similar generous settlements on other firms in the industry or labour market. The union can also use "whip-sawing" tactics, extracting increasingly favourable settlements from each employer in turn. This kind of leverage may be exerted because selective strikes against one or a few employers at a time enhance the effectiveness of strikes by maximizing their cost to the target

employer(s) while minimizing their cost to the union. The struck employer(s) may well lose business to non-struck competitors, a cost which may prove unendurable for very long. The union, on the other hand, has only a portion of its membership on strike, and those still working can in effect support their striking fellow members by means of strike benefits, which increase the ability of the strikers to "hold out."

A transition from single-employer to multi-employer bargaining, however, could significantly reduce the effectiveness of strikes by lowering their cost to employers who would otherwise be the targets of selective strikes while raising their cost to the union. Under the principle of "one down, all down," individual employers would no longer lose business to competitors, since they too would be closed down (either by strike action against the entire group or by a multi-employer defensive lockout if the union attempted a selective strike despite multi-employer bargaining).² Moreover, the financial burden to the union of paying strike benefits would be increased, since all members employed by the employer group would be out of work. Thus, employers may find it advantageous to bargain collectively through a multi-employer association, just as individual workers may find it advantageous to bargain collectively through a union.³

The preceding analysis is applicable mainly to relatively small employers. "Usually it is the smaller companies which feel the need of concerted action to match the power of a strong union, since a large corporation even acting alone may possess sufficient bargaining power to counter that of a union."⁴ It is not inconceivable, however, that in some cases even large corporations may feel that multi-employer bargaining is necessary to maintain reasonable parity of bargaining power with the union.⁵

Where the preponderance of bargaining power is on the employers' side, however, the impetus for multi-employer bargaining may come from the union. If a weak union is faced by a number of relatively strong employers, single-employer bargaining may result in something akin to "whipsawing in reverse." The strongest of the employers may take the lead in negotiating a minimal settlement, which will then be used as a pattern by other firms, who will argue that they cannot be expected to undermine their competitive position in the product market by granting more liberal terms. To avoid the establishment of industry-wide or area-wide labour standards based on those negotiated by its relatively weakest unit, the union may press for multi-employer bargaining.⁶

There is another aspect of differential bargaining power which also bears upon the formation of multi-employer bargaining units.

One party may be set at a disadvantage in facing the other because it is unable to get at the source of the other's authority.....In the case of the employer, he may bargain with a local union which is controlled by policy pronouncements of the national organization..... If agreement is reached at all.... it is reached on the terms of the national union, even though the employer never meets the national officials.... Thus, an employer may be bargaining with a local group which is powerless with respect to certain issues, without ever having an opportunity to bargain with those union leaders who do possess power.

This difficulty of the employer's reaching the source of union power has been especially marked where a national union has sought to fix a national wage "pattern" for all its members.....

One effect of this practice has been to encourage an expansion of the (bargaining) unit so that the organized employers will carry sufficient weight to force the national union, which controls policy, to bargain with them rather than promulgate policy and bind their local organizations to follow it.⁷

Other advantages of multi-employer bargaining

If the establishment of a multi-employer bargaining unit alters the balance of bargaining power, why would the side losing power ever accept such a unit? In some instances acceptance may not be voluntary; rather, it may be forced by a labour relations board certification decision or a test of economic strength.⁸ More important,

however, are the many instances in which both sides agree voluntarily to multi-employer bargaining because the party suffering a loss of bargaining power sees offsetting advantages. Attention will now be turned to a number of potential advantages of multi-employer bargaining aside from increased bargaining power. While in some instances they may be more relevant to one side than the other, in many cases these advantages are mutual.

One mutual advantage from multi-employer bargaining is that it promotes standardization of wages and other employment terms throughout the bargaining unit, and thereby reduces competition among workers and employers in labour and product markets. "Taking wages out of competition" through standardization has long been a goal of organized labour. In the absence of standardization, competition in the product market may exert downward pressure on labour standards throughout the industry or labour market. Furthermore, standardization may be a political necessity for union leaders whose membership exacts equal treatment, regardless of the particular employer for whom they work. Employers may desire standardized employment terms because this eliminates one element of competition in the product market; no employer can have a competitive cost advantage based on substandard

employment terms. Once uniform terms are established, moreover, there is the added advantage that the union can act as an effective policing agent to see that all employers conform to the agreement. Thus, multi-employer bargaining units may be established by mutual consent because there is ".... one common ground on which labor and at least parts of management can meet and cooperate: the area of limitation of competition."⁹

Chamberlain examines how market pressures can promote multi-employer bargaining units in the following passage:

In general, it may be said that the common terms of a single agreement, if they are to be effective in reducing competitive pressures, must operate over the area within which employees represent potential threats to each other, and employers likewise to each other, both through the medium of wages and working conditions..... Willingness on the part of any group of workers to accept a lower wage or pressure by any companies in the same competitive field to secure a lower wage endangers the wages of all other workers and the profit positions of all other companies. The threat may be initiated in the labor market, where a number of competitors are all bidding for the same type of labor. If one or more bid down the going wage rates, in individual negotiations with the union, there is likely to be an irresistible pressure from other producers to be granted the same favorable terms. A generally lower wage scale will thus have been introduced by individual concessions..... On the other hand, the threat to employees and employers may come in the product market, where businesses of lesser degrees of efficiency may be driven to cut wages in order to meet the price

competition of more efficient competitors, perhaps setting up a chain reaction as other businesses seek to retain the same competitive positions. These threats from both the labor market and product market are of course inter-related, since wage cutting in the labor market may lead to price cutting in the product market, and price cutting may stimulate wage cutting.

If product market competition extends beyond the scope of the local labor market, the competitive pressures on wages and employment conditions will be intensified, leading the union and sometimes the employers to seek to extend the area of the agreement to cover the area of competition.¹⁰

The relative importance of these competitive pressures as factors promoting multi-employer bargaining varies among industries. In oligopolistic industries the type of price competition discussed above may be largely absent. In highly capital-intensive industries labour costs may be such a small percentage of total costs that wage rates have relatively little relationship to unit production costs and the firm's competitive position in the product market. If there is a leading firm in the industry which can negotiate a pattern-setting agreement, and this agreement is generally followed by all significant competitors, the need for formal multi-employer bargaining may also be reduced.

It may be concluded, and available empirical evidence tends to support this conclusion, that multi-

employer bargaining is most prevalent in industries where:

- (1) There exists intense competition among many small firms in the product market.
- (2) There exist cost structures in which direct labour costs are a relatively high percentage of total cost.
- (3) No single employer or group of employers dominate the industry, therefore there is no natural leader or pattern-setter.

Where these conditions prevail, multi-employer bargaining may be aimed as much at the employer who might "break rank" regarding labour standards as against the union.¹¹

There are, however, some exceptions to these generalizations. In some instances multi-employer bargaining exists even where the conditions listed above do not prevail. The Canadian meat packing industry is a case in point. It is not possible to generalize as to the reasons for the emergence of multi-employer bargaining in the "exceptional" cases. Rather, it would be necessary to examine the development of such units on a case-by-case basis, something which is beyond the scope of this study.

A number of other unilateral or bilateral advantages which can arise from multi-employer bargaining may be classified under the general heading of "convenience factors." Pollak notes that in industries composed of numerous small firms the union can provide a useful service in recruiting labour for employers who might be too small to perform the recruiting function effectively by themselves.¹² By providing a centralized hiring hall, maintaining adequate records of job seekers, providing competent interviewing, and disseminating job information, the union may help greatly in securing an adequate and efficient work force for the employers. Such assistance is especially useful where employment is relatively casual or subject to wide seasonal fluctuations. Thus the union may help to rationalize the labour market. While such union activity in the labour market is not necessarily predicated on the existence of a multi-employer bargaining unit, it is likely to be facilitated by it.

Another potential benefit to management which is related to labour supply lies in the area of training programs needed to provide adequate numbers of skilled workers. Such programs may be beyond the means of individual firms, particularly if most firms in the industry are relatively small. Furthermore, an individual

employer may be reluctant to incur training expenses if he has no assurance that other employers in the same labour market will also establish programs, since there is the possibility that they will hire away workers trained at his expense. In such a situation, an employer conducting training programs will, in effect, be subsidizing his competitors in the labour market (and perhaps in the product market as well). Such difficulties can be overcome by training programs conducted by an employer association as an adjunct to its bargaining activities. Assuming economies of scale in training programs, the cost per employer would decrease. Furthermore, the programs would provide workers for all employers in the labour market, thus eliminating the threat that employers establishing training programs will subsidize those who don't. The role that employer associations may play in providing training programs is summarized in the following passage from a U. S. Congressional report:

In some industries, particularly among crafts, training is the very life of both the unions and the companies. By the use of the multiemployer association, industry-wide training programs within a limited geographical area can be established at reasonable cost to each employer. If each employer had to rely solely upon his own resources the amount of such training would drop markedly.¹³

Multi-employer bargaining can also facilitate the negotiation and administration of agreements. A single master agreement is likely to reduce significantly the total time and effort spent by both sides in negotiations. The union no longer must engage in separate negotiations

with a number of employers. Employers delegate the negotiating function to a committee or an individual who represents the entire group, rather than performing this function individually. Parenthetically, it may be noted that in industries composed of many small firms the negotiators are likely to be more expert and skilled bargainers under multi-employer bargaining than single-employer bargaining. The "professionalization" of bargaining can help to smooth the negotiating process, promote a well-written agreement, and avoid strikes caused by inept bargaining. Regarding administration, Chamberlain concludes that:

....the master contract with centralized administration through the union and an employers' association permits greater ease for enforceability. Instead of relying solely upon local union and company officials for the determination of the meaning of terms, a second check is provided through the central offices of both parties, which may have encountered similar problems in other companies under the same agreement. Resolution of difficulties may therefore be facilitated by the building up of a common set of interpretations of a common agreement.¹⁴

Thus, under multi-employer bargaining, uniformity of labour standards is promoted by arrangements for administering the master agreement as well as the existence of such an agreement.

Furthermore, multi-employer bargaining may promote good union-management relationships because "....when the bargaining unit is expanded, the financial resources available to the parties to support their joint relationship are....increased."¹⁵ Increased financial

resources may enable the hiring of a permanent arbitrator who may do a better job than a series of arbitrators hired on an ad hoc basis because he develops a specialized knowledge of, and insight into, the particular circumstances of the employers and the union with which they deal. Other devices for solving problems may also become feasible, such as ".....special fact-finding commissions, as for example to undertake a joint job-evaluation program or investigation into sources of supply of new workers."¹⁶

Moreover, a multi-employer bargaining unit can help to stabilize industrial relations by deterring membership raids by rival unions. "[I]t may prove unfeasible for rival unions to penetrate and split off any part of a larger unit if that part has become well integrated with the whole, and it may prove impossible for rival unions to instigate that wholesale shift in allegiance which the capture of the larger unit would require."¹⁷ Such protection against membership raids is an obvious advantage to the incumbent union. But employers, too, may benefit because inter-union rivalry tends to result in disruptions of production and losses of time due to electioneering. Moreover, if the incumbent union is ousted, the rapport which had been developed with it may have to be labouriously rebuilt with a new organization.

Finally, multi-employer bargaining can make feasible certain fringe benefits, such as retirement plans and health insurance schemes,

which otherwise might be impossible in industries composed mainly of small employers. Some types of benefits programs are characterized by economies of scale. Thus, programs which are prohibitively expensive if established singly by small employers become possible when purchased by an association of such employers. In addition to lowering costs, larger-scale benefits programs also enable more expert and efficient administration. It is not inconceivable that the gaining popularity of fringe benefits has been a significant factor promoting the establishment of multi-employer bargaining units in some instances.

Employees, unions, and employers may all gain by the expansion of fringe benefits made possible by multi-employer bargaining. Employees get benefits programs which are less expensive through group purchase than when bought by individuals. Unions receive credit for obtaining these gains for their members. In an economy where fringe benefits are becoming increasingly commonplace, small employers may improve their competitive position in the labour market, gaining greater ability to attract and hold an adequate supply of labour.

Some possible difficulties of multi-employer bargaining:
the negotiating parties

Any examination of multi-employer bargaining units which is confined only to their advantages for unions and managements is incomplete; some potential disadvantages and problems which may arise from multi-employer bargaining must also be noted. As with the advantages,

the extent of the difficulties vary with particular circumstances. In some cases, difficulties are either overcome or accepted because the felt advantages of multi-employer bargaining outweigh them. In others, they may prevent the establishment or continuation of a multi-employer bargaining unit.

The tendency toward centralized decision making and standardized conditions of employment can create serious problems if the firms and subgroups of employees covered by a master contract are not relatively homogeneous. A single contract applicable to all may overlook the particular circumstances of individual firms and the preferences of particular groups of employees. For management, this can mean operating under an agreement inappropriate to its situation. For a union, it can result in discontent among segments of its membership. Subsidiary company-wide or plant-wide agreements may alleviate these problems, but there remains the difficulty of deciding how much autonomy to grant to the various components of the multi-employer bargaining unit. Pierson summarizes the problem as follows:

....the basic issue is whether conditions of rank as between firms should be made uniform or whether differences in surrounding circumstances need to be recognized. If some kind of compromise solution seems called for, the knotty question still remains how much diversity should be permitted.¹⁸

Chamberlain offers the following analysis of the problems which varying circumstances may pose for multi-employer bargaining:

The worst problems of organizing and maintaining organization in multi-employer units are engendered by the nonhomogeneity of the businesses and unions affected. Their differences may be ruinous. Their competitive positions may be dissimilar, so that one company might prefer to grant a wage increase of 10 cents an hour to avoid a strike, while a less efficient company might believe that such a wage increase would raise costs and prices to a ruinous level. One local union might believe it possible to extract from its company a wage increase which other unions know they cannot obtain....

In some instances there may be difficulty because firms manufacturing different products, with different competitive conditions, may be included under the same agreement....

The fact that plants are geographically dispersed may make an expanded bargaining unit unlikely of attainment. Differential costs of living may be used as a basis for denying equality of terms. Supply and demand factors in labour markets sometimes differ markedly. Differences in size and in technological characteristics may likewise make it unwise to apply identical terms to all, and if supplementary agreements under a master agreement should be contemplated, to permit varying terms, it may be found that so much must be left to the supplementary agreements as to make the master agreement virtually meaningless....

Finally, the outlook of people - both employees and management - in different population backgrounds and geographical characteristics may be sufficiently dissimilar to suggest the advisability of local agreements in which the wishes of the local residents may be given full expression....¹⁹

It is clearly indicated in the preceding analysis that the feasibility of multi-employer bargaining can vary with the degree of similarity among affiliated employers and worker groups. Establishing and maintaining a cohesive multi-employer bargaining unit necessitates "....continued support from all interested groups....," which in turn

requires ".....a mutuality of interest among workers on the one hand and employers on the other....."²⁰

Related to the problem of handling diverse circumstances in the contention that multi-employer bargaining is undesirable for employers because it limits their freedom of action in conducting labour relations, as compared with single-employer bargaining. Technically, joining a multi-employer unit does mean that the employer surrenders authority to the group, and to some employers this may be an important consideration. But in some cases the "autonomy" and "freedom of action" which supposedly derive from single-employer bargaining are more apparent than real, and multi-employer bargaining may increase the employers' actual control over industrial relations decisions.

Where small, relatively weak employers face a strong union individually, their only realistic prerogative may be to accept terms dictated by the union. Only by forming an association can they correct the imbalance in bargaining power and thereby gain an effective voice in determining contract terms. This is particularly true where the union has unilaterally pressed for standardization of employment terms in a particular product or labour market. Furthermore, control over industrial relations can be increased if the alternative to multi-employer bargaining is pattern bargaining under which the autonomy of pattern-followers may be more apparent than real. Chamberlain discusses this possibility as follows:

....in specific situations some companies which have accepted wage leadership may come to feel uncomfortable over their commitment to policies or decisions over which they have no control. To the extent that union pressure does not permit their falling away from the 'pattern' set by the dominant company, the solution may come through their securing a voice in determining the 'pattern' - establishing informal employer relationships ultimately leading to formal association and a multi-employer bargaining unit.²¹

Thus, if a firm's "freedom of action" under single-employer bargaining is to be meaningful, there must be a reasonable parity of bargaining power and/or little union pressure to standardize employment terms in a given product or labour market. Even where such circumstances prevail, however, it should not be concluded that multi-employer bargaining is necessarily undesirable from the viewpoint of employers. It is still conceivable that some surrender of autonomy by individual employers may, in certain instances, still increase the well being of all.

Finally, problems may arise in the process of forming a multi-employer bargaining unit. There may, for example, be a high initial cost to employers in establishing such units. "If wage differentials are to be eliminated and wage uniformity undertaken, this result is seldom accomplished except by 'leveling up' from the low-wage payers to the high-wage payers, and the expected or feared costs of such an initial program may be thought to offset any values to be gained."²² There can also be organizational problems in establishing multi-employer bargaining units.

The problem of determining how the cooperating companies should be represented, by a representative from each or by a select committee; the voting power which each shall be given; whether a simple majority vote shall suffice to bind all; and similar questions may be so great as to preclude agreement among companies on the details of their own organization within an expanded unit. The inducements to merge interests may be less significant than the difficulties of effecting such a merger. Nor is this possibility restricted to employers; unions, too, at times have found similar problems in trying to organize several bodies into a larger bargaining unit.²³

Multi-employer bargaining and the private parties: an evaluation

In evaluating multi-employer bargaining it is important to bear in mind that numerous multi-employer units have been established not by means of certification or pressures from one side, but rather by mutual consent between unions and employers. This implies that in many situations both sides feel that this type of bargaining structure is best suited to their needs and provides the most appropriate framework for union-management relations. To be sure, it is indicated in the preceding analysis that multi-employer bargaining is not suitable in all industries, and even where it has been established there may be problems which arise from expansion of the bargaining unit. Where the circumstances have been unfavourable or the problems caused by centralized bargaining have been "too great," multi-employer bargaining units have not been established or have failed to survive. The existence of many and stable multi-employer bargaining units would indicate, however, that the multi-employer unit is in some cases the most appropriate type of

bargaining unit from the viewpoint of the negotiating parties, and that in such cases, the advantages outweigh the disadvantages.

The attitudes of many union personnel and employers who have participated in multi-employer bargaining provide additional evidence that under appropriate circumstances such a bargaining structure is mutually advantageous. In its report on hearings concerning multi-employer bargaining, a U. S. Congressional Committee stated that "....the overwhelming majority of the views presented by labor and management representatives was that its usefulness and strengths outweigh its weaknesses."²⁴ Rehms states that union leaders are "generally unified" that multi-employer bargaining should be allowed, and "Many employer groups have had a long and satisfactory experience with multi-employer bargaining and would bitterly resent the abolition by legislative enactment."²⁵ He adds that in industries characterized by numerous small firms oriented toward local markets, where multi-employer bargaining has become most prevalent, "....the system appears to operate to the mutual satisfaction of almost all concerned," and concludes as follows:

In those industries where industry-wide or region-wide bargaining now exists,both labor and management (with extremely limited exceptions) support it strongly. They believe that it is necessary to preserve a rational system of industrial relations.²⁶

Thus, it would appear erroneous to conclude that multi-employer bargaining has largely favoured one party and occurs only when the disadvantaged side has such a bargaining structure imposed on it by the other party or a labour relations board.

Regarding the significance of multi-employer bargaining units to the negotiating parties where conditions favour such a structure, Pierson summarizes the crux of the matter in the following passage:

Issues involving unions which affect the entire employer group can then be dealt with much more effectively on a group-wide rather than a company-by-company basis. Problems of labor recruitment, inter-area wage competition, technological adjustments and the like are apt to call for market-wide treatment. These are industries (i.e., where multi-employer bargaining is most prevalent) in which return on invested capital is typically low and the barriers to greater sales and improved working conditions typically high. Both the unions and employers in these fields have come to realize that their only hope lies in tackling problems on a broad front. Organized employer action under these conditions becomes but one aspect of the struggle for survival.²⁷

Thus, from the viewpoint of participating unions and employers, it would seem that public policy should sanction, or at least allow, multi-employer bargaining in those situations where the parties conclude that it is the most appropriate form of bargaining structure.

But private interests are only one of the elements to be considered in determining appropriate public policy regarding multi-employer bargaining units; the public interest must also be considered. Attention

will now be turned, therefore, to the implications of multi-employer bargaining for the economy.

Multi-employer Bargaining and the Economy

As was the case with respect to the private parties, multi-employer bargaining offers possibilities of both costs and benefits to the economy. Ideally, one would wish to compare the benefits and costs and determine where the balance lies. Unfortunately, however, there is no way to measure with precision the social benefits and costs of multi-employer bargaining. Moreover, it is less easy to infer where the balance lies than to infer that multi-employer bargaining is often mutually beneficial to the participating parties; the existence of numerous long-established, voluntary multi-employer bargaining units provides evidence relevant to the latter matter, but not to the former. Conclusions regarding the economic impact of multi-employer bargaining vary. Some economic theorists, taking the model of a perfectly competitive economy as the starting point in their analysis, judge multi-employer bargaining to be detrimental. It appears that a majority of labour specialists, however, take a more sanguine view of multi-employer bargaining. In this section attention will be focused on the more important economic costs and benefits which have been attributed to multi-employer bargaining, in other words, to the arguments for and against multi-employer bargaining based on its economic impact.

It should be noted at the outset that much of the controversy over the economic impact of multi-employer bargaining centers on industry-wide or nation-wide bargaining units. Arguments are advanced concerning the impact of bargaining which is broad in its geographical scope and covers large numbers of workers. But such arguments are not necessarily pertinent to multi-employer bargaining per se, since numerous multi-employer units are local, while a single-employer unit in a large, multi-plant corporation may be nation-wide in scope. "The company-wide unit....may include tens of thousands of employees from coast to coast...." while the multi-employer unit "....may include fewer employees and a smaller geographical area, as, for example, all the department store clerks in a city...."²⁸ Thus, in some cases, single-employer bargaining may have a greater impact on the economy as a whole than multi-employer bargaining.

One should not go to the opposite extreme, however, and conclude that the economic effects of local multi-employer bargaining are so slight that they can be ignored. If an industry is concentrated in one locale, multi-employer bargaining will be industry-wide in its effects and have national repercussions. Moreover, multi-employer bargaining among firms competing in a local product market, such as food retailers, may be of little significance nationally, but of great significance in the particular locale. (For example, a strike which closed all supermarkets in Ottawa would not greatly affect the Canadian

economy as a whole, but would be a very serious problem to Ottawa residents whose food supplies were cut off.) Multi-employer bargaining among firms competing in local product markets may be thought of as national, industry-wide bargaining in a microcosm. Therefore, only if we are prepared to deal solely in broad aggregative effects on the entire economy and require effects which may be trivial in the aggregate, but highly significant in particular local economies can we conclude that the economic impact of many multi-employer bargaining units is not significant enough to merit consideration because they are not industry-wide in the usual sense.

The economic effects of multi-
employer bargaining: the indictment

The controversy over the economic effects of multi-employer bargaining centers on impact on the production and distribution of goods and services, that is, on economic welfare. A major argument against multi-employer bargaining is that it broadens the scope of labour disputes as compared with single-employer bargaining and thus increases the impact of work stoppages on the public. After conducting hearings on multi-employer bargaining, a U. S. Congressional Committee concluded that, "Although (our) inquiry should not be considered definitive on this subject, the information developed to date suggests the possibility that multiemployer association bargaining has a tendency to widen the area of the dispute."²⁹ A work stoppage in a multi-employer bargaining unit which is industry-wide in scope "....would threaten the

very supply of a commodity."³⁰ The same situation might occur in particular locales where all producers in a local product market comprised a single bargaining unit.

It is conceivable that the increased impact of work stoppages resulting from multi-employer bargaining could lead to increased government intervention in industrial relations, which would result in at least a partial shift in decision making from the private sector to government.

.A nation cut off from its coal supply or its steel or its oil or its railroads for an indefinite duration, while the union and employer parties battled it out, would become a frail and impotent creature. However, if it were to recapture for the state the power which should be its own, the result might be to lead into a state-regulated economy with all the dangers that come from undue concentration of power in governmental hands. That is to say, excessive private power must lead inevitably to excessive governmental power to control it.³¹

Thus, multi-employer work stoppages - especially if industry-wide in scope - could represent exercises of private economies which, from the viewpoint of the public interest, would be excessive and intolerable.

Another major criticism of multi-employer bargaining is that it reduces competition and increases monopolistic tendencies in the economy. The results are higher prices for goods and services and lower output, both of which are detrimental to consumer welfare, and result in undesirable distortions in the allocation of income.

Whether intentional or not, the effect of joint negotiation will be to raise the prices of goods and services for the benefit of the bargaining parties. Thus, the organized sectors of the economy will profit at the expense of the unorganized sectors, and those organized industries which provide more strategic - that is indispensable - goods and services will obtain differential benefits even over their organized brethren in other industries.³²

In Chamberlain's view these results are said to follow from three basic causes.³³ First, a wage bargain made for an entire multi-employer group is bound to be unsuited to particular businesses and marginal firms will be eliminated. The concentration of production in fewer companies will inevitably reduce competition in product markets. Second, uniform terms will discourage the formation of new businesses, particularly small ones.

The building of a business from scratch is a difficult process at best, and to force entrants to offer the same conditions of employment which long-established concerns find it possible to grant is to place impossible obstacles in the path of would-be entrepreneurs. This conservation of the market in the hands of those who presently control it will eliminate a source of potential competition and will further deliver the consumers into the hands of those business and union groups which have made of an industry their private preserve with no trespassing by others.³⁴

Third, "...it is maintained that when businesses and unions are organized into a single (market-wide) bargaining unit, collusion to profit at the expense of the public will be the inevitable result...."³⁵ When all competitors are represented by a few spokesmen in matters affecting

cost and price, the temptation to reach "understandings" which result in price setting may be overwhelming. "In sum, it has been said that once (market-wide) bargains replace individual bargains, consumers have lost their only effective check on excessive and arbitrary demands by the special interest groups in charge of the industry."³⁶

The economic effects of multi-employer bargaining: the defense

Proponents of multi-employer bargaining have developed an extensive rebuttal to the indictment discussed previously. Regarding the impact of work stoppages, it is argued that against the expansion in their scope which results from multi-employer bargaining there must be set the possibility that work stoppages will occur less frequently. Multi-employer bargaining is likely, according to its defenders, to reduce the incidence of work stoppages in at least three ways. First, the increased professionalization of bargaining, which is especially likely to occur when the scope of bargaining is expanded in industries characterized by small-scale employers and labour units, reduces the likelihood of labour disputes due to inept negotiating. Second, and perhaps more important, the expanded scope of bargaining is likely to imbue both sides with a greater sense of social responsibility, hence, make them try harder to reach agreement without work stoppages. This stems from an awareness of the heightened impact of multi-employer work stoppages and a generally less parochial view of collective bargaining which often accompanies expansion of the bargaining unit. Third, to the

extent that the parties fear governmental intervention in larger-scale work stoppages they will try harder to reach agreement in order to forestall such intervention. (The last argument might be unapplicable, however, if one party thought it could gain a more favourable agreement through government intervention than by means of collective bargaining.)

Moreover, it is arguable that regarding the impact of strikes multi-employer bargaining may differ little from single-employer bargaining if, in the latter, there is coordination among the labour units and/or employers involved in the nominally separate negotiations. Similar bargaining positions for all labour units on the one hand and employers on the other, coupled with common expiration dates for all agreements, may result in a multi-employer work stoppage despite the absence of multi-employer bargaining.

Regarding the argument that multi-employer bargaining restricts competition and promotes monopoly, a number of counter-arguments have been made. First, the elimination of wage competition through multi-employer bargaining does not necessarily eliminate price competition in product markets; effective price competition is not predicated solely on wage competition. Wage uniformity does not necessarily imply uniformity of production costs per unit of output or even of unit labour costs. Even with uniform wages, the cost structures of individual firms in a multi-employer bargaining unit can vary with differences in managerial efficiency and the quantity and quality of the other inputs, such as

capital equipment with which labour works. Thus, even with wage standardization, "....price competition may continue merely operating on a new plateau."³⁷ That is, market competition is centered around increasing efficiency in production and distribution rather than depressing labour standards.

Second, the solicitude shown for marginal firms by the opponents of multi-employer bargaining may be misplaced. Such firms may respond to wage standardization by improving their efficiency and productivity rather than going out of business. This would be a social gain rather than a loss. Moreover, even if some marginal firms were driven out of business, society as a whole may gain from the concentration of production in more efficient firms.

Third, the monopolistic effects of even an industry-wide bargaining unit may be effectively checked by the availability of substitute products. In economic terms, the monopoly power said to be inherent in a multi-employer bargaining unit varies inversely with the elasticity of demand for the output of the unit. "[T]he elasticities of demand for particular products, and the development of new substitute products and techniques, are likely, as generalization, to be important checks to (monopolistic tendencies) which are often ignored or underrated."³⁸

Fourth, "....it is maintained that social productivity can sometimes be maximized through large-scale coordination of business policies

rather than through small-scale independent policy formation."³⁹

As Professor Pigou has demonstrated, there may be divergences between marginal social net product and marginal private net product, so that maximization of the latter does not automatically lead to maximization of the former. If the social net product can be increased through broader-scale planning, such as in an industry unit, then this procedure is to be encouraged. And to the extent that planning proceeds through collective bargaining, as it does for personnel policies, then industry-wide bargaining is economically beneficial.

In an economy operating under competitive forces there may be numerous ways in which marginal private cost is less than marginal social cost. The speedup system, unhealthy or unsanitary working conditions, and technological changes which proceed without consideration of the impact on affected workers are obvious instances where the employer may bear little of the costs of injury which others have incurred in the process of working for him. Those costs, however, will fall on society at large through expenditures for relief and general welfare purposes. Such situations may be susceptible to control only through concerted action over the competitive area. (Emphasis added.) Indeed, this has been the basis for factory legislation.... But the areas in which such control is socially desirable may be equally well or better encompassed through concerted union-management action on an industry-wide basis, with the further advantage of administrative decentralization.

At least with respect to employment of workers and the determination of the terms of their employment, then, it is argued that industry-wide bargaining will permit solutions to problems beyond the control of (single-employer) bargaining. But more than this, as the unions become interested in production problems, they may participate in industry-wide programs of cooperation for improved productivity which would not be feasible on a smaller scale. (Emphasis added.)⁴⁰

Fifth, the greater sense of social responsibility which may stem from multi-employer bargaining, discussed previously with respect to work stoppages, may also be manifested in restraint in wage settlements and product pricing.

Finally, in reply to the argument that multi-employer bargaining is likely to promote monopoly and the undesirable consequences which flow from it, "....it has been maintained that experience and practice belie such a conclusion."⁴¹ While the conclusiveness of the evidence may be debatable, the empirical studies of multi-employer bargaining conducted to date do not lend much support for the conclusion that such a bargaining structure inevitably promotes practices associated with monopoly. Regarding one empirical investigation, Lester concluded that "From our study of wages under national and regional collective bargaining, we found no evidences of more monopoly in the seven industries subject to national and regional bargaining than in industries and firms operating under company or individual plant bargaining."⁴² On the basis of hearings on multi-employer bargaining, a U. S. Congressional Committee concluded that "Those who fear the results of 'big unions' and 'big employers' will gain very little support from their positions from the history and results of multi-employer association collective bargaining."⁴³ Generally similar conclusions are to be found in the empirical studies of multi-employer bargaining.⁴⁴

Multi-employer bargaining and the
economy: some conclusions

It is concluded that a blanket judgement regarding the economic effects and social desirability of multi-employer bargaining would be misleading. Multi-employer bargaining units offer the possibility of both desirable and undesirable economic consequences, and the balance between the two is likely to vary from unit to unit. The arguments offered by both sides in the controversy over multi-employer bargaining are impressive, and neither side can be judged as always right or always wrong. While the empirical evidence gathered to date does not, by and large, lend significant support to the critics of multi-employer bargaining, it would seem, premature to judge that this evidence demonstrates conclusively that multi-employer bargaining will under no circumstances result in adverse economic effects. The authors agree with the following summary regarding opposing views on multi-employer bargaining:

There are....two camps representing diametrically opposed viewpoints with respect to the policy question of whether bargaining units should be allowed to expand certain not very clearly defined boundaries. What should be apparentis that neither camp has an exclusive title to correct judgement.... The arguments adduced by each group have a valid basis. It seems plain that large-scale units as for example covering an entire industry, may be instruments of both economic advantage and disadvantage....⁴⁵

In part, the controversy over multi-employer bargaining stems from the need for both competition and cooperation in the economy. Arguments against multi-employer bargaining stress the former, while

counter arguments stress the latter. While dealing specifically with industry-wide bargaining, the following passage would seem relevant to multi-employer bargaining in general:

The need for some sort of synthesis between the economic methods of competition and cooperation is clearly demonstrated in the issue of industry-wide bargaining[T]he debate is now proceeding on the different levels of analysis. There are the opponents of the industry-wide unit who argue its evil effects in terms of competitive economic theory. They are struck with the important role which competition must play in a progressive society. There are the exponents of the industry-wide unit who argue its effects in terms of cooperation to achieve control over economic matters previously immune to control. They are struck with the vital part which association must play in a healthy society. Neither can legitimately charge the other with error, since both are right in their basic premises. Competition is needed, and so is cooperation. We need an economic society in which both these forms of organization play their legitimate roles. Industry-wide bargaining which leaves no room for competition between the firms in that industry eliminates the incentive to capacity performance. Competition which makes no room for (cooperation), to bring under control matters now beyond the effective power of local units, denies to men the maximization of their capacities to control their own affairs.⁴⁶

The formidable task which faces public policy makers, then, is to try to preserve the advantages of multi-employer bargaining (the economic benefits flowing from cooperation) while protecting the public against its potential costs (resulting from excessive reductions of competition).

Multi-Employer Bargaining:
Appropriate Public Policy

On the basis of the preceding analysis, the authors conclude that neither a blanket approval nor a blanket condemnation of multi-employer bargaining is warranted. This type of bargaining structure offers potential benefits and costs to both the private parties (unions and employers) and to the economy. The balance between benefits and costs is likely to vary substantially from case to case.

What seems most appropriate is a policy of flexibility toward multi-employer bargaining. Legislation barring all multi-employer bargaining should certainly be avoided. Such legislation would preclude the benefits of multi-employer bargaining, benefits which in some cases, may be substantial for both the private parties and the economy. Furthermore, it would seriously disrupt industrial relations in the many existing multi-employer bargaining units, regardless of whether they are certified. It was concluded previously that numerous multi-employer units have been established voluntarily by mutual consent between unions and managements, out of the conviction that on balance, they provide the most suitable bargaining structure for dealing successfully with the problems of each side and with mutual problems. Promoting good industrial relations would seem to require that the parties be allowed wide latitude to experiment in establishing the bargaining structure best suited to their needs. Many multi-employer bargaining units have resulted precisely from this type of

experimentation. Only if it is likely that a multi-employer unit would have economic effects contrary to the public interest and the costs to the public are judged to outweigh the benefits to the private parties, are there solid grounds for not allowing such a unit. To be sure, our inability to accurately quantify the costs and benefits of multi-employer bargaining to the private parties and the public means that men may differ in their judgements on these matters. But does not mean that such judgements should be avoided. Public policy decisions are made in many areas in which precise measurement is impossible; it has yet to be demonstrated that multi-employer bargaining should be an exception.

Regarding certification, four major points emerge. First, legislation should delegate to labour relations boards broad discretion in certifying multi-employer bargaining units. Legislative guidelines should be broadly stated. Perhaps it would be sufficient to deal with the major objectives of the certification process and the "cost-benefit" criterion outlined in the preceding paragraph. Under no circumstances should the certification of multi-employer bargaining units be prohibited, and the authority of boards to certify such units should be explicit.

Second, labour relations boards should freely exercise their discretionary authority. While the boards may develop more specific criteria for multi-employer certification than those provided in legislation - indeed, this is one of their duties - decisions should be made on a case-by-case basis, according to the particular circumstances of each

and without predetermined biases for or against multi-employer bargaining. What should be avoided are rigid policies which make the refusal or granting of multi-employer certifications largely automatic. Such policies may reduce the workload of labour relations boards, but they are not in the best interests of the bargaining parties or the public.

Third, the barriers to the establishment of inter-provincial multi-employer bargaining units should be removed. These barriers fragmented jurisdiction and provincial compulsory conciliation restrict the freedom to experiment with bargaining structures which was advocated previously. This is true for all industries except those under the jurisdiction of the Canadian Labour Relations Board. Not only is it impossible to obtain inter-provincial multi-employer certifications in these industries, but the establishment of voluntary actual multi-employer bargaining units on an inter-provincial basis is also hampered. (Fragmented jurisdiction and compulsory conciliation are examined in greater detail elsewhere in this study.)

Fourth, there should be an effective mechanism for modifying multi-employer bargaining units after they have been certified. If freedom to experiment with bargaining structures implies the right to establish such units by certification as well as informally, it also implies the right to modify or dissolve multi-employer units if they prove unsatisfactory, either because they did not fulfill original expectations, or because circumstances have changed over time.

Finally, if a multi-employer bargaining unit is detrimental to the public interest, it should be asked whether policy alternatives to maintaining fragmented bargaining could be used in dealing with the particular problems involved. An examination of such policy alternatives is beyond the scope of this study. It is concluded, however, that insofar as is possible public policy should be designed to control the adverse economic effects which might flow from multi-employer bargaining while still maintaining the advantages which might also be found in this type of bargaining structure.

Canadian and U. S. Multi-employer Certification Practices

Canadian Labour Boards

In general, labour relations boards in Canada have broad discretionary powers, except in cases of multi-employer units, to determine the appropriateness of a bargaining unit for certification purposes and they can decide whether or not an appropriate unit should be any one of the following types: Craft, guard, office, part-time seasonal, plant, or multi-plant. Frequently, what is considered an appropriate bargaining unit -- or an appropriate certification practice -- by one Board is not necessarily the same in the opinion of another.

In deciding on the appropriateness of bargaining units, the Boards consider:

- (1) the purpose and interpretation of legislation;
- (2) the community of interest of the employees to be included in the bargaining unit;
- (3) the history and pattern of collective bargaining in the industry, in the firm, or in the bargaining unit in question;
- (4) the desires of the employees, unions, and managements;
- (5) agreement among the parties as to the appropriateness of the bargaining unit;
- (6) any prior decisions, policies, or principles that could be applied to the situation.⁴⁷

Generally speaking, the boards are conservative in their application of the criteria for determining appropriate units, emphasizing maintenance of the status quo. This is particularly evident in the certification of multi-employer bargaining units, where heavy stress is placed on past practice. "The historical pattern of collective bargaining is a major factor used by the boards in determining whether or not a unit of employees of more than one employer is deemed appropriate."⁴⁸

Statutory limitations on the certification of multi-employer bargaining units. — The Federal Labor Relations Act and five of the ten provincial Acts deal specifically with the certification of multi-

employer bargaining units. General criteria relevant to the certification of multi-employer bargaining units are specified, as are certain limitations on the discretion of labour relations boards in certifying such units. At the federal level, Section 9(3) of the Industrial Relations and Disputes Act deals with the certification of multi-employer bargaining units.

Where an application for certification under this Act is made by a trade union claiming to have as members in good standing a majority in a unit that is appropriate for collective bargaining, which includes employees of two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit, unless (a) all employers of the said employees consent thereto, and (b) the Board is satisfied that the trade union might be certified by it under this section as the bargaining agent of the employees in the unit of each such employer, if separate applications for such purpose were made by the trade union.⁴⁹

The labour relations statutes of Manitoba, Nova Scotia, New Brunswick, and Newfoundland are similar to the Federal Act. The British Columbia Labour Relations Act is different in text but resembles in meaning the provisions of the other five Acts:

A trade union claiming to have as members in good standing a majority of employees in a unit that is appropriate for collective bargaining, and the employees in which are employed by two or more employers, may make application under this section to be certified for the unit. The Board shall not certify the unit under subsection (2) unless (a) the unit is appropriate for collective bargaining in respect of all the employers; and (b) all the employers have consented to representation by one trade union for the unit; and (c) a majority of the employees of each employer are members in good standing of the trade union making the application.⁵⁰

The crux of these provisions is that the certification of multi-employer bargaining units is allowed, but the inclusion of a particular employer in the proposed unit can be vetoed by either the employer or a majority of his employees. Given these provisions, it may be concluded that the law is not conducive to the certification of multi-employer bargaining units. In effect, the union must obtain separate certifications for each employer and then engage in de facto multi-employer bargaining.⁵¹

Six of the eleven labour relations acts deal specifically with multi-employer bargaining units, while those of four provinces; Saskatchewan, Alberta, Ontario, and Prince Edward Island make no explicit provision for multi-employer units. The Quebec Act provides for multi-employer units in a clause dealing with the certification of associations of employers. Labour relations boards in these provinces are not explicitly limited in determining whether multi-employer units are appropriate for certification purposes. Therefore, there is implicit authority to certify multi-employer units. However, these boards are not willing to utilize this authority.

Actual practices regarding the certification of multi-employer bargaining units. -- Despite the statutory provisions which allow the six labour relations boards to certify multi-employer bargaining units, few certifications of this type are granted. The scarcity of such certifications can be traced to legislative restrictions. The Labour

Acts in the six jurisdictions provide that all employers in a proposed multi-employer unit have to consent to its formation and that the majority of employees of each employer must also consent to such a unit. Since compliance with these conditions is difficult to fulfill, unions are reluctant to apply for multi-employer certifications.

No multi-employer bargaining units have ever been certified in Manitoba, Nova Scotia, and New Brunswick, despite legislative provisions which permit such certifications. Neither have multi-employer bargaining units certifications been issued in Ontario and Alberta.

Ontario legislation makes no positive provision for multi-employer units and in its definition of bargaining units uses the term "employer" in the singular only. Nevertheless, the section dealing with the composition of a bargaining committee refers to bargaining between a trade union and a "group of employers bargaining jointly." It appears that voluntary multi-employer bargaining arrangements are permissible, but recognition through certification of multi-employer units is not contemplated in the law. Alberta presents a similar case, since Alberta law authorizes a bone fide union to serve notice of a meeting for bargaining purposes upon the "employer or employers." This suggests that multi-employer bargaining, and therefore, multi-employer bargaining units, are permissible in that province.⁵²

In Quebec, multi-employer certifications are non-existent, which can be attributed to the lack of provisions for multi-employer certifications in the Quebec labour relations statutes.

The Quebec certification case of Beau Brummel, Inc., and Crown Royal Clothing⁵³ illustrates the Board's conservative attitude towards multi-employer certification. In interpreting the Quebec statute, the Board acted as though limited by legislation despite their relative freedom as compared with the six boards subject to explicit provisions regarding multi-employer certifications. In this case, the Board expressed the view that:

It is apparent that where the legislator deemed it desirable to grant the right to several associations of employees to join to make up the majority against an employer, he took pains to say so in clear and unmistakable language. Had he intended, on the other hand, to allow one association of employees to ask for certification against two or more employers jointly, (the Board presumed that) he would have said so in equally clear language. The fact is he did not. Expressio unius, exclusio alterius. Nor can the legislative intent be properly inferred from reading the Act as a whole. (Thus the Board believed that) the language used in the statute precludes such a conclusion. Finally, the Board stated that a joint certification covering two or more employers 'does not lie' under the Act.⁵⁴

If the Quebec Labour Relations Board had interpreted the lack of explicit statutory provisions on multi-employer units as meaning it was to use its discretion, the conclusion would have been entirely different.

It is apparent that the Quebec Labour Relations Board does not perceive that lack of explicit limitations could have been deliberate, to allow for changes over time, which could be better accomplished by Board decisions than by changes in legislation.

While the Saskatchewan and Prince Edward Island Labour Relations Boards are not vested with specific legislative authority to certify multi-employer bargaining units, in the past these Boards have certified a few multi-employer units. The SLRB assumes by virtue of Section 5 of the Trade Union Act that it has the authority to certify multi-employer units. Consequently, if the SLRB decides that a proposed multi-employer bargaining unit is appropriate and that other certification requirements have been satisfied, it will usually grant certification.

In some instances, however, the SLRB has refused to issue a multi-employer certification, as illustrated by the Great-West Implement Company case.⁵⁵ Apparently, the Board was willing to experiment, but only if there was evidence that both parties were fairly well matched with respect to bargaining power. In this instance, there was no employers' association competent to bargain.

The PEIB has issued certification orders in the past, but it is no longer willing to certify multi-employer units, on the grounds that such units have been found impractical for purposes of negotiation.

Two labour boards active in multi-employer certifications. ---

Of the six Boards mentioned previously that are guided by statutory provisions dealing with multi-employer units, only the Canadian Labour Relations Board, the Wartime Labour Relations Board (predecessor to the CLRB), and the British Columbia Board have had experience with multi-employer certifications.

The CLRB and the WLRB may be treated as a single organization, since the WLRB is the direct predecessor of the CLRB. There were many more multi-employer certifications under the WLRB, which issued 13 certificates between 1944-1948, than under the CLRB which issued only eight from 1948 to 1963. The decline can probably be attributed to the more limited jurisdiction of the CLRB and to Section 9(3) of the IRDI Act, which requires consent of all employers. This difficulty generally leads to a union strategy of applying for certifications on a single employer basis.

Most of the industries in which the employees might be covered by a multi-employer certification already bargain on this basis, e.g., shipping or stevedoring. Trucking is the only exception where the CLRB could probably expect many multi-employer certification applications in the future. Reviewing the cases where certification has been refused by the CLRB leads to the conclusion that without the current version of Section 9(3) of the IRDI Act more multi-employer bargaining units would be certified, since at present the major obstacle unions face in

obtaining multi-employer certifications is the consent of all the employers.

British Columbia has the only provincial board with considerable experience in issuing multi-employer bargaining unit certifications. Prior to 1954, the British Columbia statute stipulated that only a majority of the employers must consent before a multi-employer unit could be certified. During this period the Board was favourably inclined towards multi-employer bargaining units, and many such units were certified. In 1954, an additional stipulation was added when the Industrial Conciliation and Arbitration Act was replaced by the Labour Relations Act. The new Act stipulated that the unions had to submit proof that the "majority of employees of each employer have consented to representation by the trade union making the application."⁵⁶ In 1961, a new amendment changed the provision from agreement among the majority of employers to all employers. Over time, then, new legislative provisions in British Columbia have made the issuance of multi-employer certifications -- which are called "poly-party" certifications by the British Columbia Labour Relations Board -- progressively more difficult.⁵⁷ Although the Board is not against poly-party bargaining units, the kinds of difficulties encountered in practice made the Board favour their establishment on a de facto, or voluntary, basis, rather than through certifications. The main reason for the Board's attitude is its inability to alter the formal structure which is established via

certification orders. Currently, changes can be made in a certified poly-party unit only if the union applies to the BCLRB "during the 'open season' for a separate certificate for one of the employers in the poly-party unit."⁵⁸

What seems to be lacking (in British Columbia) is some sort of de-certification legislation enabling the Board, on the basis of an application by union or employer, to carve out one or more firms from a poly-party certificate if the majority of employees in these firms wished it. At the same time such de-certification should not affect the status of the rest of the poly-party unit.⁵⁹

Summary. — The number of certified multi-employer bargaining units has been decreasing. There are three reasons for this. First, some existing certified units have been broken up. Second, few applications for the certification of multi-employer bargaining units are being granted. Finally, there are fewer unions requesting multi-employer certifications.

Of the eleven Labour Relations Boards, only four have actually certified multi-employer bargaining units. It is significant that of these four, two, Saskatchewan and Prince Edward Island, do not have any statutory provisions dealing specifically with the appropriateness of multi-employer bargaining units. In spite of statutory restrictions on the CLRB and increasing statutory restrictions on the BCLRB, both Boards have exercised their discretionary powers whenever unions have been able to overcome the stringent legal requirements of obtaining both employer and employee consent.

"The fact is that the unit appropriate for collective bargaining changes with time."⁶⁰ The Boards realize this, but the rigidity which exists with respect to modifying certified bargaining units once a unit is certified is such that certification makes it very difficult to resolve any complications which might arise regarding bargaining structure.

Due to difficulties that arise when one party wishes to withdraw from a multi-employer unit, or when negotiations reach the conciliation stage, it appears that the Boards in general prefer to issue a separate certificate to cover the employees of each employer.⁶¹

The U.S. National Labor Relations Board

The major difference between Canada and the United States is that a single labour relations board, the NLRB, predominates with respect to jurisdiction.⁶² Although there are 31 regional offices of the NLRB, there is only one major policy-making center for industrial relations in the United States. As a result there is a single policy and all parties are subject to the same conditions regardless of the physical location. NLRB decisions offer no advantages or disadvantages to any particular locale. As contrasted with Canada, compromises between the objectives of management and unions must be made on grounds other than geographic location or differences in legal arrangements.

The attitude of the NLRB is that it is an agent for institutional change and should reflect the forces which promote such change.

...(As) long as economic, political, and social forces encourage the expansion of bargaining units, it is unrealistic to expect the Board's decisions not to reflect that trend.⁶³

The NLRB generally recognizes the fact that in many instances, "The participants have come to a voluntary determination that this type of bargaining has a greater utility for them than does bargaining requiring them to act alone."⁶⁴ As in Canada, therefore, mutual consent is an important factor in the establishment of multi-employer bargaining units. In the United States the formation of such units is "essentially consensual, having its roots in the parties' voluntary acceptance of this method of bargaining."⁶⁵ But while some Canadian legislation stipulates that unanimous employer consent is a prerequisite for certification of a multi-employer unit, in the United States custom is sufficient. Moreover, where multi-employer units are proposed, the NLRB has not demonstrated a predisposition to deny certification.

Since early in the administration of the Wagner Act, the Board has held that under some circumstances, a multi-employer unit may be appropriate for collective bargaining purposes, even though the Act specifically authorizes the Board to decide whether an 'employer unit, craft unit, plant unit, or subdivision thereof' is appropriate. In so doing, the Board has recognized a familiar pattern of industrial relations which long antedated the original Wagner Act and thereafter 'had its greatest expansionbecause employers have sought through group bargaining to match increased union strength.'⁶⁶

The relative ease with which certified multi-employer bargaining units may be altered in the United States via the de-certification process is a factor in the NLRB's willingness to certify multi-employer units.⁶⁷ De-certification of multi-employer units is examined in detail in the latter part of this chapter.

Certification of multi-employer bargaining units. -- A discussion of NLRB practices regarding the certification of multi-employer bargaining units with the Board's General Counsel, Mr. Ordman,⁶⁸ revealed that while there are many cases of multi-employer bargaining in the United States, relatively few have been certified by the NLRB. Mr. Ordman suggested that the reasons for an actual, but uncertified, multi-employer bargaining unit to apply for certification, based on his experience, were: (1) the desire of a union to protect itself against membership raids, and (2) the desire of employers to gain more effective enforcement of bargaining agreements among member firms.

Regarding membership raids, by granting it legal status as a bargaining agent, certification gives security to the incumbent union. The advantages of this for employers, as well as the incumbent union, have already been discussed. Regarding the enforcement of agreements, the certification order forces adherence to the bargaining agreement by all firms in the multi-employer bargaining unit. In any group there may be dissident firms or a "chiseling" minority willing to deviate from negotiated arrangements for short-run gains. The union has a

direct interest in enforcing the agreement and may be an effective instrument for controlling such inter-firm competition. Management's desire for multi-employer certification may, therefore, be related to the degree of competition among firms. It may also stem from fear of effective whipsawing tactics by the union. On the other hand, the initiative for certification as an anti-whipsawing device may come from the union if it is so weak as to become vulnerable to such tactics by employers.

De-certification machinery. — While actual multi-employer bargaining units can change as the area of competition shifts due to changes in technology in either the production or marketing of goods and services, there is an element of rigidity in a certified multi-employer bargaining unit since a certification confers a legal status to the unit. However, changes in the certified unit can be made more easily in the U. S. system of industrial relations than in Canada, since the NLRB takes the position that the reasons for withdrawal from a multi-employer unit are not subject to inquiry by the Board.

However, the desire of the NLRB to further the statutory objective of fostering stability in labour relations is reflected in the two limitations on withdrawal from a certified multi-employer bargaining unit.

One requirement has been that the withdrawal be unequivocal and not a mere sham or pretense for strategic purposes; the other, that the withdrawal be made at the proper time. While the NLRB has not precisely defined the proper time, one thing is clear and that is that the time prescribed in the parties' contract for renegotiating its terms is opportune.⁶⁹

Contrary to Canadian law, either the union or management may take the initiative in restructuring the certified multi-employer bargaining unit.

This....prospective policy of equality of treatment of employers and unions appears....to be dictated by the Act itself. Section 9(c)(2) provides that in 'determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the (representation) petition or the kind of relief sought....⁷⁰

In some Canadian jurisdictions, the difficulties in obtaining de-certifications are probably responsible for the Boards' reluctance to issue multi-employer certifications. For example, in British Columbia, many of the poly-party (pre-1954) certifications created de-certification problems that still plague the British Columbia Board, and, consequently, this Board is now disinclined to grant poly-party certification.

These attitudes and actions of the BCLRB are in direct contrast with the NLRB. The reluctance of Canadian boards to certify multi-employer bargaining units because of de-certification difficulties

are, however, understandable. Any improvement in the present system would necessitate the incorporation into the certification machinery flexibility to modify existing certified multi-employer bargaining structures in response to changes in the circumstances that prompted their certification initially.

Evaluation of multi-employer certification provisions
and practices in Canada and the United States

An evaluation of the certification process necessitates comparing the costs or advantages and disadvantages of the existing process with those of alternatives. The reluctance of the Canadian Labour Relations Boards to certify multi-employer bargaining units is in contrast to the more flexible position taken by the NLRB.

The NLRB is willing to certify almost any bargaining structure that unions and management develop without imposing its own preferences. The burden of defining the appropriateness of a bargaining unit structure is borne primarily by union and managements. In Canada, on the other hand, emphasis on certifying small units precludes similar freedom of action by her unions and managements. The parties are permitted to develop actual bargaining units any way they see fit. But their position is restricted in the long run because of Canada's legal machinery. It appears that, aside from the complications arising from eleven separate jurisdictions, the lack of adequate de-certification procedures is a major deterrent to multi-employer certifications and bargaining.

While Canadian law requires initial unanimity among employers at the time multi-employer certification is requested, the United States practice rests on the parties' voluntary, continued acceptance of this type of bargaining. The NLRB has held that the employer parties to this relationship had the right to withdraw from the group unit and deal with the union individually, even in cases where there has been a long history of multi-employer bargaining. Furthermore, unions and management are given equal opportunity to initiate action to modify the certified bargaining units. Flexibility enabling unions and management to respond to changing conditions is thus assured.

An evaluation of the certification process requires consideration of available alternatives. The implications must be considered as to the way in which a particular certification process, and the collective bargaining structure which is shaped by it, are related to changes occurring in the economy. Canada's economy, like that of the U. S., is evolving towards centralized economic centers. Technology is affecting production and distribution in such a way as to expand the area of competition in the product markets. Businesses are expanding in size. Production facilities may be decentralized, but as the scale of production grows larger, the need for long-range planning, and thus centralized policy-making, is increasing. The breaking down of relatively isolated product markets results in the increasing economic integration of the entire economy.

Present Canadian policies and practices regarding bargaining unit certification and de-certification hamper the adjustment of the bargaining structure to such changes. As Woods and Ostry point out,

....the problem concerning the structure of the bargaining unit in Canada is in its rigidity, which prevents natural change and evolution.⁷¹

Multi-employer structures often represent the working out of compromises between managements and unions regarding their respective objectives in a context of changing economic and social pressures.

Canadian boards certify small bargaining units assuming a relative stability in the employer-employee relationship. The certified bargaining unit continues to exist as initially determined regardless of the changes taking place in the environment affecting both managements and unions.⁷²

As legislators are not infallible and cannot anticipate all possible circumstances, it is inevitable that application of law takes place in the actions of Labour Relations Board members in relating the intent of the law to a changing real world. The intent of labour law is that industrial relations should be shaped in a way compatible with larger economic and social goals, not that value judgements about bargaining unit structures per se are to be made. Unions have shown interest in multi-employer certifications, but the legal restrictions preclude any feasible action.⁷³ "The original intention of the policy

was to foster collective bargaining; the bargaining unit was merely an instrument necessary to carry out the policy."⁷⁴

The consequence of Canadian certification policy has been the creation of a collective bargaining system based on small single units at the level of the firm. Despite centralized tendencies which result in pressures for larger bargaining units, Canadian labour policy is based on a high degree of de-centralization. Paradoxically, in light of past experience in both Canada and the U. S., the pressure for extension of the bargaining unit will probably come from the employer side as well as the union side, especially from those firms growing large enough to engage in long-range planning to exercise some control over as many variables as possible, which includes their competitors' labour costs.⁷⁵

Although the pressures for centralization are expressed in the formation of actual multi-plant and multi-employer bargaining units, outside the certification framework, a more favourable legal climate could serve as a link between labour policy and the realities of industrial relations. To conclude, the Boards should be provided with greater discretionary powers which would permit them to reflect in their practices the strong pressures for expansion of bargaining units.

Some means must be found of accommodating these strong centripetal tendencies within an extraordinarily inhospitable social, political and constitutional environment.⁷⁶

Summary

In the first section of this chapter the implications of multi-employer bargaining for unions and managements were examined. Such a bargaining structure can shift the balance of bargaining power sometimes in favour of employers and sometimes in favour of the union. Nevertheless, numerous multi-employer bargaining units are established by mutual consent because the loss of bargaining power by one side is outweighed by various types of benefits which may be derived from multi-employer bargaining. These "additional" benefits to one or both parties may include a reduction of competitive pressures in both product and labour markets, facilitating the recruitment and training of labour, making the bargaining process easier and more efficient, making feasible certain types of fringe benefits. These benefits from multi-employer bargaining are likely to be most significant, in industries composed of numerous small firms and characterized by a high degree of competition in product markets. In such industries multi-employer bargaining may be the most feasible type of bargaining structure.

Regarding the economy, multi-employer bargaining may have desirable or undesirable consequences, or a combination of both. The major potential adverse effects are broadening the scope of work stoppages and reducing competition. The likelihood of these consequences, however, is a matter of disagreement, and on the basis of

both deductive analysis and available empirical studies it would seem premature to conclude that these adverse effects are inevitable. Furthermore, there is the possibility that in at least some cases, multi-employer bargaining can be beneficial from a socio-economic viewpoint.

The objective of public policy should be to preserve the advantages of multi-employer bargaining for the bargaining parties and the economy, while protecting the public against its potential costs. Policy should be flexible and preconceived dispositions for or against multi-employer bargaining units are to be avoided. Significant revisions in Canadian policy and practices are needed. In general, there is too little flexibility and too much of a pre-disposition to deny certification of multi-employer bargaining units. Labour relations boards should be given broad discretionary powers and should not hesitate to exercise those powers, judging petitions for multi-employer certifications on a case-by-case basis with no initial bias for or against this type of bargaining structure. Finally, adequate machinery for modifying previously certified bargaining units should be developed. Regarding policy and practices relevant to multi-employer bargaining units, Canada would do well to examine carefully the U. S. experience.

FOOTNOTES

1. Neil W. Chamberlain, Collective Bargaining, (New York: McGraw-Hill Book Company, Inc., 1951), p. 178.
2. This assumes that close substitutes for the products of the struck multi-employer group, or alternative services of supply, are not readily available to customers.
3. For a lengthier discussion of the potential bargaining power advantages which employers may gain from multi-employer bargaining, see Chamberlain, op. cit., pp. 178-79.
4. Ibid., p. 179.
5. Ibid.
6. For further discussion of this point, see Chamberlain, op. cit., pp. 179-80.
7. Ibid., pp. 180-82.
8. For a description of a case in which employers were willing to undergo a work stoppage to establish multi-employer bargaining, see Chamberlain, op. cit., pp. 178-79.
9. Otto Pollak, Social Implications of Multi-employer Bargaining, (Philadelphia: University of Pennsylvania Press, 1948), p. 12.
10. Chamberlain, op. cit., pp. 172-73.
11. Frank C. Pierson, "Cooperation Among Managements in Collective Bargaining," Labour Law Journal, Vol. 11 (July, 1960), pp. 622-63.
12. Pollak, op. cit., p. 22.
13. Multiemployer Association Bargaining and Its Impact on the Collective Bargaining Process. Report of the General Subcommittee on Labor, House of Representatives, December 1964 (Washington: U.S. Government Printing Office, 1965), p. 17. For examples of training programs conducted by multi-employer associations, see pp. 17-19.
14. Chamberlain, op. cit., p. 184.

15. Ibid., p. 184.
16. Ibid., p. 185.
17. Ibid.
18. Frank C. Pierson, Multi-Employer Bargaining: Nature and Scope, (Philadelphia, University of Pennsylvania Press, 1948), p. 34.
19. Chamberlain, op. cit., pp. 187-89.
20. Pierson, op. cit., p. 37.
21. Chamberlain, op. cit., pp. 177-78.
22. Ibid., p. 187.
23. Ibid.
24. Multiemployer Association Bargaining and Its Impact on the Collective Bargaining Process. Report of the General Subcommittee on Labor, Committee on Education and Labor, House of Representatives, December 1964, (Washington: U.S. Government Printing Office, 1965), p. 1.
25. Charles M. Rehmus, "Multi-Employer Bargaining," Current History 48 (August, 1965), p. 92.
26. Ibid., pp. 96, 112.
27. Frank C. Pierson, "Cooperation Among Managements in Collective Bargaining," Labor Law Journal, Vol. 11 (July, 1960), p. 623. Emphasis added.
28. Chamberlain, op. cit., p. 199.
29. General Subcommittee on Labor, op. cit., p. 30.
30. Chamberlain, op. cit., p. 203.
31. Ibid.
32. Ibid., p. 200.
33. Ibid., pp. 200-202.
34. Ibid., p. 201.

35. Ibid.
36. Ibid., p. 202
37. Ibid., p. 207.
38. Ibid., p. 403.
39. Ibid., p. 205
40. Ibid., pp. 205-206.
41. Ibid., p. 207.
42. Ibid., pp. 207-208.
43. General Subcommittee on Labor, op. cit., p. 1.
44. For additional empirical information on multi-employer bargaining see: Clark Kerr and Lloyd Fisher, "Multiple-Employer Bargaining: The San Francisco Experience," in Insights into Labor Issues, eds. Richard A. Lester and Joseph Shister (New York: The Macmillan Company, 1949), pp. 25-61; Jesse T. Carpenter, Employers' Associations and Collective Bargaining in New York City (Ithaca, New York: Cornell University Press, 1950); Clark Kerr and Roger Randall, Collective Bargaining in the Pacific Coast Pulp and Paper Industry, (Philadelphia: University of Pennsylvania Press, 1948).
45. Chamberlain, op. cit., p. 211.
46. Ibid., p. 478.
47. Edward E. Herman, Determination of the Appropriate Bargaining Unit, Canadian Department of Labour, 1966, p. 40.
48. Ibid.
49. Ibid., p. 117.
50. Ibid.
51. Woods and Ostry, op. cit., p. 301.
52. Ibid., p. 101-102.
53. Herman, op. cit., p. 128.

54. The case of the International Association of Machinists, Lodge, 1709, Applicant; and Great West Implement Company Ltd., Respondent, (Decisions of the SLRB for the year 1945), p. 67.
Source: Herman, E. E., op. cit., p. 167.
55. Herman, op. cit., p. 123.
56. Ibid., p. 123.
57. Ibid., p. 126.
58. Ibid., p. 124.
59. Woods and Ostry, p. 502.
60. Herman, op. cit., p. 26.
61. In the United States, there are also State Labor Boards, but their jurisdiction is insignificant relative to the NLRB.
62. Chamberlain, op. cit., p. 199.
63. Multi-Employer Association. "Bargaining and Its Impact on the Collective Bargaining Process." Report of the General Subcommittee on Education and Labor, House of Representatives, December, 1964; 1965: U.S. Government Printing Office, Washington, p. 22.
64. Ibid., p. 22.
65. Ibid., p. 23.
66. Ibid., p. 24.
67. De-certification of multi-employer units is examined in detail in the latter part of this chapter.
68. Discussion with Mr. Ordman at the Industrial Relations Research Association Meeting, Cincinnati Chapter, September 18, 1967.
69. Multi-Employer Association, House of Representatives Report, op. cit., p. 24.
70. Ibid., p. 25.
71. Woods and Ostry, op. cit., p. 497.
72. Ibid., p. 110.

73. Herman, op. cit., p. 133.
74. Woods and Ostry, op. cit., p. 502.
75. Ibid., p. 501.
76. Ibid., p. 501.

CHAPTER IX
THE CRAFT BARGAINING UNIT

INTRODUCTION

The issue of craft certification revolves around compromising objectives of the public interest as well as those of the employer and workers--skilled and unskilled. This chapter meets the central issue and strives for a solution that attempts to optimize the results of compromising.

The alternatives for craftsmen to achieve their objectives in the bargaining process are examined. The limitations and disadvantages for these alternatives are also discussed in the light of their possible repercussions on collective bargaining.

The present laws and practices of labour relations boards in Canada and the U.S. are surveyed and contrasted. The criteria being used for the application of these laws, both for initial certification and for granting separate representation to craftsmen presently in industrial bargaining units, are investigated.

The practices of Canadian labour boards display considerable anti-craft bias, particularly in industrial plants, regarding both initial certification and severance of craft bargaining units. The question is raised as to the relationships between board practices and such issues as industrial conflict, freedom of self-determination, and supply of skilled labour.

This chapter also examines the possibility of certifica-

tion of multi-craft bargaining units as an alternative to the present Canadian labour board's craft certification practices.

To conclude, this chapter attempts to examine the proper place of the craft employees in the collective bargaining structure. After the current practices of the boards are surveyed and the costs of those practices evaluated, positive recommendations are made concerning the various alternatives open to the boards.

I. CRAFT UNIONS AND BARGAINING UNITS

The problem of craft unions and bargaining units covers two distinct areas and a somewhat hazy dividing line between them. On the one hand, there are the craft unions that have historically represented and dominated certain general classes of industries for as long as there have been unions. This area includes such industries as construction, railroads, and printing trades. At the other extreme are the typical manufacturing industries that has a large number of semiskilled workers and some craft workers. Some industries do not clearly fall into one or the other of these categories and must be dealt with as special problems; in one case being handled as predominantly craft, at other times being treated similar to the industrial case.

The types of work that have historically been organized by crafts do not usually present much difficulty to public labour bodies charged with determination of bargaining units. The tests of extent of union organization, history of

representation, the nature of employer organization and operation and others all would confirm the individual craft unit as the appropriate unit for bargaining. This is not to deny that there may be difficulties involved in such unit designation. Many of the unions involved in these industries have practiced featherbedding, have retarded the pace of automation, have had restrictive membership practices and have been adept at whipsawing employers into large economic gains. Whether or not the construction industry would be better off economically and society would benefit from lower building costs by having a large industrial union representing all or most of the workers in that industry is open to further debate.

However, such a change would represent a major shift in industrial relations practices and there seems little likelihood that legislation permitting or requiring such a change could be enacted at this time in either Canada or the United States. It may well be that at some future time, it will appear politically and economically feasible to introduce such a change, primarily if there promises to be large cost savings associated with such a change. But for the present, we feel that the present methods of handling bargaining unit determination in construction, printing, etc., is acceptable within the current political context.

However, it is interesting to note that some of these craft unions are combining into what has been called a "conglomerate-style unionism".¹ Such action will lead to

unions of a type proposed later in this chapter that would seem to be more logical for bargaining purposes and perhaps more willing to adapt to technological change.

II GOALS OF VARIOUS INTEREST GROUPS IN SEEKING A PARTICULAR BARGAINING UNIT

In developing a particular bargaining unit, various groups desire a structure that furthers their own self-interest. This section outlines the divergent interest of public, union, and employer groups vis-a-vis craft organization. Like all problems in which the participants embrace heterogeneous goals, the solution becomes a matter of balancing interest.

A. The Public Interest

There are two primary considerations in considering what is in the public interest. One is the concept of promoting continuity of the production process with efficient factor allocation. The boards contend that this is usually facilitated by large bargaining units which encompass skilled and non-skilled employees. The other concept is a desire to provide maximum freedom of choice of participants and to recognize legitimate interests of minority groups (whoever they may be). In many industrial plants, the minority group(s) is a skilled craft that desires to be differentiated from the industrial workers. This desire is usually based upon a difference in status created by factors such as a longer training program and more complex work.

As in any political process, equal power between all of the individual participants is not a necessarily desirable norm.. The labour boards, vested with the function of balancing these claims, should go beyond the bounds of a particular interest group and give a solution that indicates concern for the aggregate problems of the economy.. This may mean sometimes giving a decision that favours minority groups.

B. The Craft Interest

The craft employees will seek to maximize the wage and non-wage (seniority, "bumping", etc.) differential that separates their group from the semi- and unskilled employees. They may establish the greatest bargaining leverage by attaining certification as an independent bargaining unit or by capturing effective participation in a larger bargaining unit, which may be more difficult to accomplish. This latter method has been employed in the U.A.W. by the craft employees who obtained a veto power over contracts negotiated by the national union in the auto industry. Generally, craft employees will seek the initial representation of a craft union in the bargaining process or they will seek a liberal board policy for severing craft groups from industrial unions.

Craft employees in industrial companies are usually a minority in the plant, but they may attain power in several ways.² They will try to place their group on a power spectrum that ranges from participants in a democratic process within a large industrial union to complete autonomy as an independent bargaining unit.

One solution is to combine the skilled employees with the other employees into one bargaining unit. Typically, this leaves the craft minority subject to the will of the semi- and unskilled majority, but the craft employees are not necessarily powerless. At times, the prestige and status among the employees enjoyed by the craftsmen, because of their more developed skills and usually higher incomes, give them effective power bases to sway the majority. However, the frequency with which the semi- and unskilled workers (the majority) voluntarily promote the interests of the craft members -- through combined bargaining -- for higher wages and status is questionable.³

Although in some instances the industrial employees and the employer, or only one of the two parties, acting in self interest, may be willing to further the financial and non-financial standing of the craftsmen, the motivation for such action may be due to such factors as industrial unrest generated by dissatisfied craftsmen, high turnover rate of craftsmen and difficulty in the supply of craftsmen because of below market wage rates for these employees.

The following statement by Charles West³, Vice-President of the Machinists' Union and head of its Aerospace Council, reflects the significance of unrest among craft workers as a factor of maintaining the balance of power between industrial and craft workers. Mr. West states that in the aerospace talks in 1968, "a great emphasis will be put on the skilled trades wage question ... (as) there is unrest among skilled workers who feel the differential between their pay and that of

production-line workers had grown too slim." The problem, he asserts, is not quite as acute as in the auto union, which has made pay gains for skilled workers a major goal in this year's negotiations with the auto industry.

The craftsmen may seek power in the industrial union government by attaining positions of influence on committees or by other formal participation in the union's decision-making process.

Ostensible there are internal matters to be settled by the power groups within the union, but the possibility of labour board action favorable to the craft group will give the group additional leverage to promote their demands in combined bargaining with the employer. The attitude of the boards toward craft certification has a direct effect on the ability of the craftsmen to obtain a position of leverage in an existing industrial union. In recent years, however, the disposition of the boards towards crafts in industrial plants was not very favorable.

Probably the most extreme means of leverage craft employees can exercise, if they are not otherwise successful in promoting their interests in a proposed industrial unit bargaining contract, is to conduct a "wildcat" strike. By this method the craftsmen can usually, because of the critical nature of their occupations, tie up production processes. While the craft employees in an industrial union cannot bargain directly with the employer, his desire to start production may cause him to

exert pressure on the industrial union to participate in satisfying the craft demands.

There may be a time when the craft groups will or can effectively participate in the industrial union government and consequently be better able to accomplish their aims through inclusion in the larger unit. However, craft power would probably be maximized if the craft unit is certified as an independent unit, directly bargaining with the employer and able to threaten an authorized strike. This maximum position on the power spectrum can be reached only if labour boards maintain a favorable attitude toward craft certification.

C. The Industrial Unions

The industrial unions will prefer to include the craft group as a part of the bargaining unit to exert maximum pressure against the employer as all employees present a unified front.. The total group pressure may force the employer to grant some concessions that he would not grant if he could whipsaw several smaller groups. The employer may make additional concessions because he wants all workers covered by a single contract since one contract permits more reliable planning for production and marketing operations. The bargaining power of the industrial union increases as the number of workers it represents increases and as the union includes those workers with the greatest bargaining power. The union will want to represent both the majority and minority groups. Since the government of the union is

elected and the constituency is composed mostly of non-craft employees, the union will be more sensitive to the wishes of the majority. The union will not want to include provisions in the bargaining contract that especially further minority interests if doing so it jeopardizes the interests of the majority.

D. The Employer

The industrial employer's interest in the appropriate unit may vary with each case. Facing a unified front would seem to be least desirable, but it presents some positive advantages: the employer will not be subjected to "whipsawing" (one union securing favorable terms and another union using it to promote its own aims in bargaining). Also, one settlement will promote continuity of the production process, assuming no wildcats by crafts. If the bargaining units are atomized, the result may be industrial chaos and loss of stability in the firm.

At times, it would be to the employer's advantage to bargain with many units. If the employee bargaining units are divided, the employer may gain a favorable balance of power. Also, the employer may gain the services of craft hiring halls in providing skilled labor. As discussed later in this chapter, the separate representation of the craft workers may be a significant factor in calling forth an aggregate supply of skilled employees sufficient to fulfill the demand of all employers.

E. Mutual Interest Of The Bargaining Parties

The continuity of the production process will be a desired goal of all the parties to the bargaining process. This is not to say that at any one time a party will surrender a chance to disrupt the production process to further its own interests. There will be times when the strike or the lockout is thought to be a short-run necessity. However, the loss that accrues to all parties when production is ceased is undesirable unless this loss is less than the benefits from disrupting production.

F. Implications of Craft Units

In general, the labour relations boards of the U.S. and Canada have the discretionary power to determine the composition of the bargaining unit. The bargaining unit is the foundation on which the entire structure of the bargaining process rests. The threat of recognition or severance of a craft group as the result of a favorable policy by labour boards toward separate craft representation gives craft employees leverage in industrial plants. They can either demand effective participation in the industrial union government, or, if need be, seek separate status. Either of these alternatives furthers the craftsmen's ability to seek their particular goals. Critics of craft certification contend that separate certification of craft bargaining units fosters industrial unrest and needlessly disrupts the bargaining process.⁴

An unfavorable attitude of the boards towards craft

certification also has consequences, one of which may be the curtailment of the supply of skilled labour. Also, such attitude by the boards diminishes the power of the craft employees to seek differentiated treatment.

III CRAFT CERTIFICATION: UNITED STATES AND CANADIAN LAWS AND PRACTICES

Theoretically, the definition of the appropriateness of a craft for certification lies within the legislative decision making process, but because of the difficulties involved in politically agreeing upon precise rules and the inflexibility that would be associated with such rules, this function is delegated to the various labour relations boards. Most Canadian boards in performance of their craft certification duties are given a "carte blanche" by the law. In some jurisdictions, however, like Ontario, they have to follow some legislative guidelines on which to base their decisions.

The certification of a craft group in an industrial plant, as an appropriate bargaining unit is a two-step process; first the status of the craft must be established, then, the appropriateness of the craft group for separate certification determined. The craft group may be an unrepresented group of skilled employees who are sought to be represented by a craft union, or a craft union may be attempting to "carve out" a group of craft employees from a larger group of employees who are presently represented by an industrial union.

A. Defining the Craft Unit and Initial Certification

Seven of the eleven Canadian Labour Boards⁵ and the U.S. NLRB are given no legislative direction as to how to exercise their discretionary power to determine craft status.

Some degree of legislative direction has been given to the Nova Scotia Labour Relations Board (NSLRB), the Prince Edward Island Labour Relations Board (PEILRB), the Ontario Labour Relations Board (OLRB), and the Manitoba Labour Board (MLB). The kind of direction ranges from explicit provisions to broad generalities.

The MLB is given elaborate guidance for the craft unit determination. In Section 2 of the Rules of Procedure for the Manitoba Labour Relations Act

A 'craft unit' means a unit consisting of all those employees of an employer who are distinguishable from the employees as a whole by reason of the fact that they belong to a craft; and includes all those who are journeymen craftsmen, those who are apprentices, and those who have definitely commenced the doing of work or the acquiring and exercising of skills leading in the established custom of the craft or in the established practice of the employer to status in the craft; but does not include employees who are doing labouring work for craftsmen without having commenced on the standard course of training and work leading to journeyman status in the craft.

If the unit satisfies these requirements, the MLB will certify it as an appropriate bargaining unit.

In Ontario, the Labour Act⁶ literally calls for a history of collective bargaining but in practice the Board has not always taken such a narrow interpretation.⁷ Usually only

traditional crafts are recognized and an emerging craft will only be recognized if it can voluntarily establish a bargaining history with the employer.

The NSLRB and the PEILRB are given no specific directions for making the craft certification decisions, but both boards are instructed to observe the community of interest of the employees.⁸ The NSLRB will recognize only traditional crafts with a history of collective bargaining.⁹ The PEILRB objects entirely to separate certification of craft employees.

The Alberta Board of Industrial Relations, although given discretion, takes a position in practice that only crafts that are well established occupations, with a tradition of collective bargaining, will be recognized. Naturally, this diminishes any chance of new crafts being recognized.¹⁰

The NBLRB will recognize only traditional crafts with a history of collective bargaining.¹¹

The CLRB and the NLRB in the U.S. have developed criteria for guidelines in their decisions regarding craft certification.

The CLRB has held that formal training¹², provincial licenses¹³, and an apprenticeship program¹⁴ are important factors in determining craft status. Probably some of the other Canadian boards utilize similar criteria to CLRB, but their decisions are not available to the public.

The CLRB deems itself directed by statute to certify the craft group as an appropriate bargaining unit once the determina-

tion of a true craft status and other certification requirements have been met.¹⁵

The other requirements are:

1. The distinguishability of craft employees from other employees in the industry.
2. Previous instances of voluntary recognition of similar craft in the industry.
3. The local conditions and manner in which the work is organized and carried on in the employer's establishment.¹⁶

The NLRB in the U.S. has broad discretionary powers to determine the craft status.¹⁷ To this end it applies the following criteria:

1. To qualify as a craftsman, the employee must be a skilled workman who works under separate supervision.¹⁸
2. To qualify as a skilled workman the employee must have trained in an apprenticeship program and then must progress through a series of occupational levels until he has become a craftsman.¹⁹

The most explicit statement of the NLRB comes from the American Potash case:²⁰

In our opinion a true craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers. To be a 'journeyman craftsman', an individual must have a substantial period of apprenticeship or comparable training. An excellent rule-of-thumb test of a worker's journeyman standing is the number of years' apprenticeship he has served -- the generally accepted standards of which vary from craft to craft. We will, however, recognize an experience equivalent where it is clearly demonstrated to exist. In addition...we shall require that all craftsmen of the same type in any plant, except those in traditional department units, must be included in the unit. By like token, employees who may

work in close association with the craft but not in the direct line of progression in the craft will be excluded. All the craftsmen included in the unit must be practitioners of the same allied craft. Furthermore, such craftsmen must be primarily engaged in the performance of tasks requiring the exercise of their craft skills.

Two of the Canadian boards, QLRB and BCLRB, although not restricted by legal provisions to determine craft status, have shown a distinct preference for relying on a historical definition in making the determination.²¹ This is to say that a craft status for a group of skilled employees will depend on recognition of traditional craft skills.

If a particular group of employees seeks craft status for a work function which has no history as a skill, the only route left open to them is the voluntary cooperation of the employer to bargain with the group so as to establish a history for the craft, an unlikely possibility.

B. Carving Out Craft Groups From Existing Industrial Bargaining Units

Another way for labour boards to affect craft bargaining units is to permit craftsmen represented by an industrial union to break away and establish separate bargaining units. Generally, the labour boards are reluctant to "carve out" a bona fide craft unit from an industrial union because of possible disruption to the existing bargaining framework. However, they are by no means alike in their attitudes or practices toward this issue.

The MLB has demonstrated that it is willing to "carve out"

craft groups from the larger unit. If the craft group is bona fide, the practice of the Board has been to certify it although it is under no compulsion to do so.²² Certification is not automatic and the Board has announced the principle that it will not certify the group if the existing bargaining unit is capable of adequately representing the smaller group.²³ One meaning given to the adequacy of representation is that there will be no certification if the employees are engaged in their craft for less than fifty per cent out of the yearly working time.²⁴

The CLRB has taken a flexible position towards the severance of craft groups out of industrial units. Like MLB, it is willing to carve out craft from industrial units, placing a high priority on the wishes of the craft employees.²⁵

If the segment of workers meets the criteria for a true craft, the CLRB feels that it has no alternative under existing legislation but to certify the group for separate representation.²⁶ The QLRB has discretion to certify the craft group, but if there is an existing certified bargaining unit the Board will rarely "carve out" the craft group.²⁷ The BCLRB has generally refused to "carve out" craft units. Exceptions to this practice are made only in the case of stationary engineers in hospitals.²⁸

The ABIR, similar to most other Canadian boards, usually refuses to carve out craft groups. There were instances, however, of the Board permitting the severance of craftsmen

from industrial units. The Board took such action only in the case of traditional crafts.²⁹ The ABIR practice is the result of patterns of utilization of the stationary engineers, who in some industries work in their craft only on a seasonal basis.³⁰

The Boards of New Brunswick and Prince Edward Island have in the past not separated craft units from industrial units. If confronted with certification application for severance of craft employees from industrial units, the PEILRB would refuse it, whereas the NBLRB would seriously consider approving it assuming a traditional craft was involved and "if an apparent injustice was being perpetuated."³¹

One of the criteria that the OLRB applies toward the eligibility of crafts for severance from industrial units is the "adequacy" of past representation by the industrial unit.³² This is a flexible criterion and "adequacy" will vary from case to case, but the burden is on the craft union to show cause for severance. The general practice of the board is to refuse the carving of craftsmen out of industrial units. One of the exceptions to this is an agreement between the incumbent and the respondent union to such certification. This would only be applicable, however, in the case of traditional crafts and where the respondent union is appropriate to represent the craft.

The attitude of the U.S. NLRB toward the craft severance issue can be obtained from an examination of the following criteria that the board applied in the Mallincredit case:

"1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists..

2. The history of collective bargaining of the employees sought at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are producing stability in labor relations, and whether the stability will be unduly disrupted by the destruction of the existing patterns of representations.

3. The extent to which the employees of the proposed unit have established and maintained their separate identity during a period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance union."³⁴

The Board has further stated that these criteria are not meant to be inclusive and that the circumstances of the individual case will determine the certification of the craft unit. In the Mallinckrodt case the Board found that the unit was a true craft unit and met most of the criteria, but because the work of the craftsmen was such an integral part of the production process, the craft bargaining unit was not allowed. Probably

the fact that the production was the processing of uranium for the government was of paramount importance.

C. Summary

The survey of laws and practices of labour relations boards shows that the craft employees are not being given much help by many of the boards when it comes to gaining separate representation in industrial plants.

In no Canadian jurisdiction is there a provision for the recognition of newly emerging crafts. The only possibility for these skilled workers to gain separate representation is for the employer and the employees to establish a voluntary tradition of separate bargaining, in most cases an improbability. Some of the jurisdictions have a policy of refusing to recognize a new craft, which implies an eventual elimination of any craft in the economy.

The practices of boards towards craft certification vary considerably. Some boards feel compelled by legislation to "carve out" the craft once the craft definition is satisfied. Other boards refuse altogether to carve out craft units, and still other boards pursue a very flexible practice of looking separately at the merits of each case.

In light of Boards attitudes towards the industrial craft certification issue, is there any reason to upset the status quo to promote minority interest? The next section considers the effect of the present laws and practices upon the supply of skilled labour available to employers.

IV CRAFT CERTIFICATION, INDUSTRIAL CONFLICT AND THE SUPPLY OF SKILLED LABOUR

This section will explore the possibility of a cause and effect relationship between board practices on craft certification in industrial plants and the following two topics: industrial unrest and shortage in the supply of skilled labour.

The practices of the Canadian labour boards could be called anti-craft.. Even the more liberal of the boards have imposed difficult conditions on separate craft representation, e.g., previous recognition of similar crafts in an industry (CLRB), or that the craft be traditional (OLRB). The boards seem to favour industrial units which embrace also the craft employees, and they have been very reluctant to "carve out" craft employees from industrial units. This policy is not altogether unjustified, and is probably the result of a widely held belief that proliferation of craft units increases the probability of industrial unrest.

Critics of separate craft bargaining claim that the industrial unrest caused by the creation of separate craft bargaining units outweigh any gains cited in the usual arguments for craft autonomy. There have been instances in Canada where very small craft units successfully struck and tied-up large plants in order to obtain higher wages, e.g., stationary engineers in Ontario. An interesting situation recently arose in the United States. Some skilled employees, maintenance men, tool and die makers, and construction and powerhouse employees, submerged within the UAW in the Chrysler Corporation complex,

petitioned the NLRB for severance.³⁵ The Board concluded in that case that severance of the craft employees from the established bargaining unit would have a disruptive effect on production and on those grounds denied the petition.

The August 1, 1967 decision of the USNLRB in the Chrysler case did not eliminate the dissatisfaction and unrest of the craft employees in the Automobile Industry, for in the 1967 Ford Motor Company strike one of the major issues of negotiation centered around the craft topic.

One of the USNLRB's reasons for submerging crafts in industrial units is to minimize industrial conflict. Bargaining with a single industrial union may lead to occasional strikes of large consequence but once a settlement has been reached, the employer usually enjoys freedom from industrial strife for a predictable period of time. Where there are several craft units in addition to the industrial unit, any one of them might be able to shut down the entire plant and the employer is subject to many more potential industrial relations difficulties plus the likely whipsawing of gains won by the different employee groups. On the other hand, in some instances, the board's action could create the very conditions it attempts to prevent. Discontent of craft employees within industrial units could lead to friction and "wildcat" strikes. However, with separate units, discontent within one group over what they feel to be special treatment given to another group might lead to similar results. In

any case, the labour boards should consider such possibilities in reaching bargaining unit decisions.

The automobile industry is not necessarily an industry in which craft employees should be separated from industrial employees. In this industry, the crafts have recently gained such safeguards as the veto power of the contract which enables them to exercise a significant amount of leverage in the formulation of bargaining demands. However, there are other industries where the crafts, when submerged in industrial units do not exercise much power within the union structure. In such situations dissatisfaction among craftsmen could lead to industrial friction. It should be recognized, however, that in some situations industrial conflict could be encouraged by the existence of separate craft units.

Further criticism of craft certification centers around the unnecessary amount of industrial conflict furthered by craft unions who try to maintain their power through promotion of featherbedding. Another issue concerns jurisdictional conflicts among crafts. Both of these problems exist and both are undesirable for the public interest and both are found in the traditional craft industries such as the railroads and building trades, as well as in the types of industries currently considered. Although present craft unionism is accompanied by jurisdictional conflict and feather-bedding, solutions to these problems may be found without necessarily resorting to the elimination of crafts, through anti-craft

certification practices. Jurisdictional conflict may be resolved through machinery established either within the unions or within the boards. In the United States, for instance, the NLRB is charged with the responsibility of determining jurisdictional disputes. The problem of featherbedding is more difficult. Solutions for featherbedding may rest on the bargaining power of the parties, government intervention, arbitration and restructuring of the existing craft unions and craft bargaining units into multi-craft bodies. The multi-craft concept is discussed at length in another part of this work.

Another issue concerns the possible effects on the supply of skilled labour caused by the lack of sufficient differentiation of craft from non-craft employees in the bargaining process. Any attempt to draw conclusions about the possible effects requires examination of the following topics:

- (A) Has there been a decline in the wage and non-wage differential in the same occupations employed in the same capacity over time? What has caused the decline?
- (B) Are there reasons, other than bargaining unit determination, for the change in differentials?
- (C) Is there a skill scarcity problem?
- (D) Is the decline of the wage differential a factor in the scarcity of skilled employees?
- (E) Have the policies of the labour boards affected the differential?
- (F) Should board policy be changed?

The subsequent sections A to F examine the above topics. The discussion is based on the survey of presently available literature.

A. The Decline of the Wage and Non-Wage Differential and Possible Explanations for the Trend

Professor Harry Cber, in a comprehensive study of occupational wage differentials from 1907 to 1947, showed that the average skilled worker's wage was 205 per cent of the average non-skilled worker's wage in 1907, but had dropped to a differential of 155 per cent in 1947. In 1959 it had fallen to about 135 per cent.³⁶

Reynolds generalizes the trend by saying that fifty years ago a craftsman received about twice as much as a labourer, but now he only receives about thirty-three per cent more.³⁷

The explanation for this trend is very difficult. Morgan cites as a possible cause the coming to maturity of the industrial nations, but he admits that it is difficult to determine what effect on the differential is caused by industrial unions.³⁸ Goldner has contended that unionism is neutral as a cause in the narrowing of the differential.³⁹

However, the period of the greatest shrinkage, 1935-1955, was the period when the balance of power in the United States labor movement shifted from craft unions to industrial unions.⁴⁰

Reynolds sees the shrinkage of the differential in terms of supply and demand. In the early part of the century there was a surplus of unskilled labourers in the United States and a scarcity of skilled workers. He attributes the scarcity of skilled labour to a small percentage of potential workers capable of being technically trained in the early 1900's, and he attributes the plentitude of non-skilled workers to the steady flow of immigrants to the United States during this same period.⁴¹ With a shrinkage of demand for unskilled workers because of technological change, it might seem reasonable that the wage for this group would decrease, thereby widening the differential. However, the cessation of an "open door" policy on immigration has greatly curtailed the supply of unskilled labour and still the differential has narrowed. The educational system, available to the masses, has readied the population for technical training, thereby increasing the supply of skilled labour. Therefore, the situation concerning the supply-demand for skilled and non-skilled employees has been reversing itself through this century.

Robert Ozanne,⁴² in a recent study, concluded that:

- (1) unionization had a substantial effect on skill differentials (craft unions widening the differential and industrial unions narrowing the differential, and
- (2) skill differentials were influenced as much by internal pressures (union policy and management and employee concepts of equity) as they were by external conditions of labour supply.

It is also possible that the decline in skill differential can be traced to a change in skill requirements in particular occupations over time. It is conceivable that the skill demands in some trades were much higher thirty years ago than they are now because of technological progress and mechanization.

None of the studies available specifically attribute the decline of the differential between craft and non-craft employees to submergence of the craft unit's interests in the larger industrial units. It is possible that this structural grouping was a factor in the decline. The decline in differential probably would have been lower were the crafts permitted to negotiate separately from industrial employees. This, however, could lead, in some cases, to a greater differential than warranted by the value of the marginal product of the craftsmen.

Probably all of these factors have been partly responsible for the decline in the skill differential: the lessening of immigration, the availability of mass education, the rise and dominance of industrial unionism, the decline in traditional skill requirements of craftsmen, and the submersion of many craftsmen in large industrial units for bargaining purposes. Although the cause or causes will be difficult to rank, further studies should be made in this area.

B. The Craft Non-Craft Differentials

The differential (wage and non-wage) between skilled workers and non-skilled workers has been diminishing through time. While the causes are not clear, the decline of the differential is resented by the craft workers and this resentment may be at the root of much of the unrest of craftsmen in industrial unions. Attention will not be turned to the reasons which can be given in defence of differentials.

The work of the skilled employee and the non-skilled employee are different. The skilled employee must perform complex operations and these operations may demand competency beyond that of semi- or unskilled workers. To acquire specialized knowledge the craftsmen must undergo an extensive training program. However, it also has to be recognized that, at times, the craftsmen following extensive technical education may be performing relatively simple functions, thus not utilizing all his training.

The environment of an industrial complex has changed. No longer is there a wide differentiation in the physical working conditions for workers and most jobs. Unlike the days past when the image of non-skilled labour was that of a worker with a pick or shovel doing long hours of exhausting labour, the non-skilled worker of today works in an environment similar to his skilled counterpart. His job will probably not be hard physical labour. But, unlike his skilled colleague, he will only undergo relatively low-level training. Because the physical requirements of the job have been lessened and

the working conditions for the non-skilled employee have been improved, nicety of occupational function alone may not be enough of an incentive to cause an employee to acquire a skill.

The apprenticeship program may be a necessary prerequisite to becoming a skilled labourer. If this is so, while the employee is undergoing the apprenticeship, his wage is likely to be lower than the wage he could be earning if he had not chosen to become a craftsman and, instead, had gone directly into the labour force as a non-skilled worker. Some promise of future rewards is necessary to encourage an employee to forsake present income. These future rewards must be either increased income or increased status or some combination of the two. On the other hand, it must be recognized that prolonged apprenticeship programs may be a union device for restricting membership and supply in their trade with the hope of gaining higher wages as a result. Also, public education in the form of vocational high schools and technical institutes are providing skilled workers, generally, with a much shorter training time than the traditional apprenticeship program.

When labour relations boards adopt a policy of submerging craft employees in bargaining units composed mostly of industrial employees, the ability of the craft employees to secure a relatively higher wage differential may be reduced. At the present time, in a society that is becoming more oriented to formal education, the prestige of the craftsman and potential for promotion is lessened. Without an adequate wage differen-

tial and with lowered social status of craftsmen, the potential apprentices may lack a significant incentive to become a craftsman. The consequence of this could be a shortage of skilled employees which may prevent employers from obtaining a full skilled labour complement. However, this may be partly offset by the establishment of internal training programs, particularly if union rules can be altered to permit such persons to hold the craft jobs.

C. The Skill Scarcity

Canada is experiencing a chronic shortage of some categories of traditional craftsmen. The efforts of the Canadian government to train craftsmen highlight the existence of craft vacancies and point out the presence of an inadequate supply of craftsmen.

In the United States shortages also exist, but whether they are chronic or of a temporary nature resulting from the full employment of the economy is a topic debated in the literature of industrial relations. Presently many United States employers have almost given up trying to find trained or quickly trainable new workers among the jobless and are seeking employees in other countries.⁴³

A study by the United States Department of Labor predicted four million skilled jobs would have to be filled within a ten year period (1965-1975) because of economic

growth and the attrition rate of workers.⁴⁴

D. Relationship Between the Skill Differential and the Supply of Skilled Labour

The reasons for the scarcity of craftsmen are not explicit. One study placed the blame on inadequate past investment in training to meet the ever-increasing needs created by the long economic boom.⁴⁵ Another publication contributes, "The narrowing wage gap between production workers and craftsmen reduced the incentive for young men to buckle down to the hard grind -- and delayed earnings -- of a long apprenticeship. Craftsmen lost status in a college-oriented society."⁴⁶ There may be some relationship between the declining differential and the scarcity of skilled labour.

There is no adequate literature available to give a definitive statement to the strength of the relationship. A recent study by Wilkinson sheds some light on this neglected area of inquiry. He demonstrates that the flow of trainees into one profession can be disrupted by a relative change in the present value of lifetime earnings of one profession with a comparable profession.⁴⁷ Perhaps if research were conducted a similar relationship might be discovered among craft and non-craft occupations.

Evidence gathered in a recent study by the U. S. Bureau of Labor Statistics led to the inference that there is little relationship between earnings differentials and labour

occupational mobility.⁴⁸ No cause and effect relationship could be stated and undoubtedly many other factors enter, e.g., knowledge of opportunities, non-wage benefits of the present job.

Chamberlain has stated that differentials for skills provide an incentive for workers to undertake the training needed for more difficult assignments. He has also pointed out that the differential constitutes a basis for social distinction.⁴⁹ Rattenburg states that the money wage will be the determinant only when all other determinants are equal.⁵⁰ Motivational studies into the factors that commit one to undertake the training for a craft are necessary. The effect of status as a craftsman on the prospective trainee needs to be examined as does the level of this status when the craft employees are submerged into an industrial union.

While it is undoubtedly true that wages are not the only determining factor in choosing an occupation, it is likely that wage considerations are one of the dominant factors. In societies such as Canada and the United States, positions of status are directly related to levels of income. The magnitude of the effect on the supply of labour of a narrowing wage differential is unknown, but there is probably some effect.

It is possible that scarcities of skilled employees are due more to obstructional rigidities such as union control over apprenticeship than to wage differentials. The fact that

scarcities occur in traditional crafts represented by separate craft unions reinforces further this argument. However, the degree of scarcity that would have existed without separate representation is immeasurable. Perhaps the shortage would have been more serious. Also, these institutional controls do not apply to newly emerging crafts which may be represented by industrial unions.

E. Effect of Labour Board Policy

If craft employees were able to negotiate better wage contracts when bargaining with employers as separate craft units, then the present labour board practices of preferring inclusive industrial units could have an adverse effect on the wage and non-wage differential for craftsmen. Potential entrants into the skills may be discouraged by the relatively smaller differential so that it may not be worth while for them to undergo the training to become craftsmen. This is not to say that separate representation of craft units, if encouraged by Boards would definitely reverse the narrowing trend of differential and rectify the scarcity problem. Perhaps it would only retard the inevitable narrowing of the wage differential as job requirements change.

Several arguments can be made against liberalizing board policy as to separate representation. One argument made by critics of initial formation of craft bargaining units is

that dissatisfied craft employees have the alternative of seeking to be "carved out" of an industrial unit. This sounds practical in theory and seemingly is a desirable compromise. In practice it is very difficult in many jurisdictions and impossible in others, as was pointed out in the survey of law and practices in an earlier section of this chapter.

Another argument against separate representation and in favour of present board practices is that such representation could restrict the upward job mobility of semi-skilled workers within the production unit, when the unit embraces skilled and semi-skilled workers. Although this may be disadvantageous from the point of view of the semi-skilled workers, it may not necessarily be a disadvantage from the point of view of the employer or the industry.

A third argument against separation of craft from non-craft employees is based on the theory that craft employees will obtain satisfactory representation given necessary safeguards within the combined unit of craft and non-craft employees. This argument assumes that non-craft workers would be willing to protect the position of craft employees. This may be true in some situations but as discussed in the earlier part of this chapter, craftsmen frequently feel that they could be better off with separate representation. Whether their complaints are real or imaginary is not relevant; what is significant is that dissatisfied craftsmen can bring unrest into the industrial relations scene; separate craft representations

could also lead to industrial conflict.

A fourth argument against separate representation is that it is unnecessary because the employer will be compelled to help the craft employees by protecting their differential in the labour contract. The employer is, of course, acting in his own self interest to insure an adequate supply of labour, to discourage turnover of his labour force, and encourage entry into the same. The employer would champion the cause of the craftsmen more readily where the representative industrial union has allowed the differential to narrow and the craftsmen are not keeping pace with their counterparts in other firms or industries. In such situations, he must promote the craft's interest to retain an adequate labour supply. The wages of the firm's craft employees must be kept equal to their counterparts in other firms to discourage inter-firm craft mobility. But the employer may be met with a demand from the existing industrial union that the existing wage differential between the skilled employees and the non-skilled employees not be increased. In effect this may lead to a wage increase for all his employees, craft and non-craft, unless he can convince the union that more skilled workers are needed to keep the company operating successfully, and that more people can only be obtained through higher wages and also that the firm is in no position to grant wage increases to all its employees. To convince the union of this may be at times a very difficult task.

In some situations the firm will probably have to grant

across the board increases, maintaining the same wage differential as in the past. This action could curtail any departures of skilled employees from the employer's firm because of inadequate wages. However, if the extent of the differential is a factor in attracting entrants into the skilled labour force, the future problem of a supply of skilled labour adequate to satisfy all employers is not completely solved by such actions.

F. Possibilities for Change in Labour Boards' Policy

The criticism of craft unionism and craft bargaining units is usually directed against the existing structure and practices of craft unions. Frequently dissatisfaction with craft unions and with separate craft bargaining units may be justified within the framework of present craft unionism. Usually the criticism is directed at the atomization of the bargaining process. This may be a valid observation but the problem is not unsolvable. Large units and craft units are not necessarily contradictory goals. Intra-plant craft units are not the only avenues of action for craft unionism; the possibility of large multi-plant, multi-employer, or multi-craft units should be considered. These could embrace all skilled blue-collar or skilled white-collar workers. Such a regrouping could eliminate the inter-craft union quarreling over jurisdictional boundaries and the problem of small units unnecessarily retarding technological progress. Even with the present institutional framework, the liberal position taken by the USMLRB in the American Potash case, described in this chapter, has not caused the unrest predicted as a

result of the decision.⁵¹

To conclude, although there is no definite proof, there is a likelihood of a cause and effect relationship between the shrinking wage differential and the supply of skilled labour. There may be less unrest fostered by craft units than is generally believed and, conversely, there may be much industrial unrest caused by dissatisfied craft employees submerged in industrial bargaining units.

These tentative conclusions call for reconsideration of the present practices of the labour boards. It is suggested that board decisions should be made only after each case has been considered against several criteria, one of which could be the effect of the wage differential on the supply of labour.

V. ALTERNATIVES AND CRITERIA FOR TREATMENT OF THE CRAFT GROUP

There are a number of ways that the labour boards may treat the craft group if recognition is requested:

- (A) Refuse recognition of the craft group as an independent bargaining unit.
- (B) Allow automatic recognition.
- (C) Apply one or more of the following criteria on which to base recognition:
 - (a) Historical precedent
 - (b) Community of interest
 - (c) Common supervision
 - (d) The degree of functional integration

- (D) Retain a completely flexible approach which would utilize the above criteria and examine each case on its own worth.

The merits of each of the approaches as compared to the others will depend on the value judgments of the decision makers. In this section the advantages and the disadvantages of each avenue will be discussed.

A. No Recognition of the Craft Group as an Independent Bargaining Unit

This solution has at least two virtues: simplicity and definiteness. The labour boards could follow this policy and the outcome of the recognition issue will be definite. The unions and the employees would know the position of the board and predictability would be at a maximum. The craft group by being included in the larger unit would have to fend for its rights in a democratic manner, and majority interest will probably control bargaining unit policy.

If craft groups are a major factor contributing to industrial unrest, a policy of nonrecognition should lead to a more stable industrial environment. However, as discussed earlier, there is considerable debate as to the degree of unrest relative to that caused by industrial unions, and there is also a possibility that unrest is caused by sub-merged craft groups.

Serious disadvantages could flow from this solution. As discussed earlier, there is a possibility that the supply of

labour may be adversely affected by the submersion of skilled employees in industrial bargaining units.

Minority rights should be considered when the minority has a valid claim to differentiation. If either the supply of skilled labour is adversely affected or if industrial unrest is created by this policy of nonrecognition, the minority, the craft employees, may have a valid claim for differentiation. However, the existence of these problems should definitely be established in each case and not just be assumed to be true.

B. Guaranteed Rights - Automatic Recognition

The most liberal policy that the boards could adopt is automatic initial certification or automatic severance of a craft group once the group has qualified as a craft. This solution, like its counterpart nonrecognition, has the advantage of being definite, simple, and predictable. Minority rights will be completely assured. However, this solution leads to fragmentation of the bargaining units with its concomitant disadvantages as previously discussed. Even if the unrest problem is less than commonly thought, this is an inflexible standard and would be unsatisfactory as a solution.

C. Criteria Which Boards Can Apply to Craft Certification

(a) Historical treatment:

The solution to the recognition problem can be accomplished by utilization of a historical reference both in the initial determination of the occupational function necessary for qualification as a craft, and in the secondary process of determining whether the craft employees are entitled to separate representation.

If a historical definition is utilized to determine craft qualification, the solution is also simple and definite, but unlike the solution of nonrecognition, this approach recognizes a distinction between craft and non-craft employees. Definite precedential guidelines established by custom will be available to unions, employers, and labour boards. The various participants in the bargaining process will know the framework in which they function and the composition of a bargaining unit will be highly predictable.

This criterion ignores the dynamics of the industrial world, i.e., overlooked are the new job functions which require workmen with advanced training, but who do not fall into the previously defined category of "craftsmen" although they are as well, or better, trained as the traditionally recognized craftsmen. On the other hand, technological change may reduce a "skill" to a routine job.

Utilization of past history as a guideline for the treatment of a group of employees who qualify as craftsmen but who are included in an industrial bargaining unit does not

have the simplicity or the definitiveness of nonrecognition, or even of a historical definition to determine craft composition. Additional factors are introduced into the decision that require more than evaluation of the past. For example, the board will look to the past treatment of the minority group included in the unit as a guide for the necessity of severance. A historical evaluation of adequacy of treatment will necessarily involve board concepts of employee equity and bargaining stability.

In a 1967 craft case before the NLRB involving Chrysler Corporation the board denied a petition for craft severance from the industrial unit. In its decision the board made a reference to wage differential as a certification criterion. It said, "Since the present pattern of bargaining commenced, the percentage of increase in pay rates reserved by the employer's skilled trades employees appears to have been substantially above that of its production engineers."⁵²

The sufficiency of the differential is a value judgment of the board. Employer, employees, unions and labour boards may differ sharply about the concept of adequacy. A discussion of adequate differential concerns a subjective topic, thus no clear cut answers are available for purposes of setting up certification guidelines. One aspect in an evaluation of differential is not whether it is too wide or too narrow, but how the employees view it. The differential may

be very wide and there may be no justification for widening it further. However, if the craftsmen imagine that it is not sufficient and that they could do better on their own, even if they could not, then dissatisfaction with it could contribute to industrial friction. On the other hand, if other workers recognize that the craft workers are getting a larger than necessary wage, dissatisfaction will also arise.

As discussed earlier, most boards rely on past craft bargaining history as a certification criterion. In a dynamic environment it is necessary that the boards start focusing more on the present and the future rather than the past.

(b) Community of interest

The concept of a community of interest is best defined in terms of the similarity of work, conditions of work, wages, hours of employment, or other common conditions of employment. The United States National Labor Relations Act, Sec. 9 (a), states that designated representatives from an appropriate bargaining unit shall represent the unit in these matters. In Canada, the NSLRB and the PEILRB are both instructed by legislation to observe the community of interest of the employees.⁵³

Substantial advantages result from this kind of grouping of employees. One advantage is the equality of treatment afforded workers engaged in similar situations. This is desirable because the "community of interest" of these employees is defined in terms of similarity which reflect, to a large

extent, the same needs.

A logical grouping within the above framework is more difficult to achieve than would at first be apparent. How is the community of interest to be limited, e.g., is it to be all craftsmen? All carpenters? All carpenter's apprentices? Accepting the condition that any grouping that is perfectly homogeneous would have to be so limited as to be meaningless, the grouping then becomes a matter of the decision maker's value judgment as to how expansive the limits of the class should be.

(c) Common supervision

A grouping of craftsmen, possibly with other workers, into a unit which is under common supervision has some advantages. Because the group will be subject to a central decision maker, it would seem desirable that the group be united so as to encompass central problems concerning it and the decision maker in the bargaining process.

This grouping of employees may have the virtue of representing craftsmen in their problems with specific reference to their employment function, but it is subject to at least two shortcomings from the craftsman's point of view. The craftsmen will be seeking different treatment from an aggregate group because of their training and responsibility.

The other shortcoming is that the level of supervision

will determine the membership of the bargaining unit. In the industrial situation management decision-making units are pyramided from small units comprising a few employees to the unit that ultimately bears responsibility over all employees. At which level to choose to determine the membership of the bargaining unit will be a value judgment with no defined criteria. This is to say that any of the decision making units is important to the group directly affected by the decision and, undoubtedly, the size or level of the unit will in turn be affected by the nature of the problem. A minor grievance, such as regulations concerning where the smoking break will be taken, can probably best be handled by the decision maker of a small unit, but problems of greater magnitude should no doubt be handled by a decision maker of a larger unit.

This criteria provides no guidelines as to the appropriate size of the bargaining unit. Although this criteria is designed so that maximum attention is focused on the effect of decision making, it gives no attention to the differences of the membership of the unit. If the craft workers were in a decision making unit with other employees, the special needs of the craft workers may be either ignored or the special treatment would be given to all the members of the class and some of these members may not warrant special treatment.

(d) Functional integration

This is a grouping that overlaps several of the previously described groupings (community of interest and common supervision), but nevertheless is treated by the U.S. NLRB as a separate criterion. In the Mallinckrodt case,⁵⁴ the U.S. NLRB stated as a criterion, "The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production process is dependent upon the performance of the assigned functions of the employees in the proposed unit."

In a recent case, the U.S. NLRB⁵⁵ denied the petition of a printer's union to represent a group of printers. The printers had failed to establish that there was an apprenticeship program but they were seeking to establish a functional difference sufficient for a separate unit. The criteria to establish this functional difference are not clear, but if the employees are so integrated into the production process that their work is only an unidentifiable portion of the whole, severance may be denied on that ground.

As a single criterion, functional integration is questionable because it puts no emphasis on the needs of a special group. The composition of a bargaining unit will depend on the method of production. In a modern industrial plant, most of the employees will be performing related functions in the manufacturing of the final product.

(D) Complete Flexibility

The labour relations boards can be, and often are,

given the power to make the decision concerning craft representation without legislative direction as to how the decision should be made. This gives the labour boards power to make ad hoc decisions tailored to solve the individual case, or the boards can through experience develop self-imposed standards which they feel must be considered in making decisions. Although most Canadian boards have discretionary powers to make the decision, it seems that little effort has been made to develop a system of flexible guidelines.

Decision making without a self-imposed set of criteria has the distinct virtue of allowing leeway to the boards to make what appears to be the wisest decision under the individual circumstances of a particular case. In addition, the labour boards do not have to be concerned about the same rationale being carried over to subsequent cases where it would not be applicable. Self imposed standards, developed through experience, give the proponents of craft certification a reference to which they may frame the issues.

Complete flexibility has the additional virtue of allowing a body of experts, of the labour board, who are aware of the economic and political issues of labour relations, to develop what they consider important criteria as guidelines. In order to retain flexibility, guidelines must not become concrete and static. The boards should be willing to alter positions as more insight into labour relations develops. The following discussion of the U.S. NLRB is offered

as an example of a labour board which has demonstrated a willingness to reverse itself on the craft issue several times.

a. The U.S. NLRB Craft Certification Practices

The National Labour Relations Act was amended in 1947 and the reference to craft units in Section 9 (6) (2) now states:

The Board shall not...decide that any craft unit is inappropriate for such (collective bargaining) purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.

This amendment was a rejection of the American Can doctrine⁵⁶ in which the Board had refused to allow craft severance because of a history of bargaining on a broader basis. The Board had firmly, although not irrevocable, applied this doctrine and generally would not permit craft severance. That Congress was concerned with the application of such a rigid principle is evident in the Congressional history of the Taft-Hartley Act.⁵⁷

Shortly after the passage of the amendment the Board refused a craft severance petition in the National Tube Company case.⁵⁸ Since the passage of the National Labor Relations Act, the Board had taken the position that a previous bargaining history would not be sufficient grounds to deny craft severance, but other factors could be present which would be sufficient. In the National Tube Case the other grounds considered sufficient for a denial of craft

severance were that the craft employees were employed in an industry, the basic steel industry, which required that they be so completely submerged in the highly integrated production process that severance was not desirable. The National Tube doctrine was subsequently expanded to embrace the wet milling, the basic aluminum, and the lumbering industries.⁵⁹

In 1954 the Board decided the American Potash and Chemical Corporation⁶⁰ case and reversed the trend of the National Tube decision. Although the U.S. NLRB held that the latter doctrine was proper for those three basic industries, it declared that it would no longer be proper for decisions concerning craft certification in other industries.

The American Potash decision established the rule that (a) where there is a true craft group and (b) where the union seeking to represent the craft had traditionally represented such a group, the Board would certify the craft group as an independent bargaining unit. The rule was derived from an interpretation of Sec. 9 (b) (2) that held Congress had intended that crafts be certified if these conditions had been met. This virtually foreclosed discretion with the Board as to certification.

The interpretation stood until 1966 when the Board decided in the Mallinckrodt case,⁶¹ that the older interpretation of 9 (b) (2) was not in accord with the intent of Congress. It cited language from the Senate Report of

Senator Taft that the Board still had the discretion to review all the facts before making the determination of the appropriate unit. In a footnote the Board agreed with the older line of decisions which held to the condition that there be a true craft group, but it expressed disagreement with the corresponding practice that gave a loose definition as to what comprised a true craft group. The Board, striving for maximum flexibility, criticized both the American Potash rule, which virtually compelled certification if the stated conditions were met, and the National Tube rule which automatically precluded severance in those designated industries.

A change in practice by the Board, that expressed keen awareness of the rapid technological changes presently occurring on the industrial scene, was the elimination of the Potash condition. This condition was that the union seeking to represent the craft group be a union that had traditionally represented such a group. This would still be a factor, but is not a sine qua non. The comprehension of the dynamics of industrial change and the attitude of the Board toward those dynamics is revealed in the following statement:

"We are in a period of industrial progress and change which so profoundly affect the production process, operational technology, and organization of industry that a concomitant upheaval is reflected in the types and standards of skills, the working arrangements, job requirements, and community of interests of employees. Through modern technological development, a merging and overlapping of old crafts is taking place and new crafts are emerging. Highly skilled workers are, in some situations, required to devote

those skills wholly to the production process itself, so that old departmental lines no longer reflect a homogeneous grouping of employees." 62

The illustrations of changing practices of the NLRB was offered to demonstrate the flexibility of the craft certification guide lines applied by the U.S. Board.

E. Evaluation of Alternatives

The easy solutions to the recognition problem -- automatic recognition and automatic denial -- are simple to apply, but no consideration is given to the economic and non-economic consequences of the individual problem. It is not recommended that either of these one-factor solutions be applied.

Utilization of tradition to determine craft status as a major craft certification criterion is too limiting for it overlooks the dynamics of industrial relations. Inter alia, this criterion overlooks the changes in the functional composition of jobs.

The community of interest of the employees criterion should be a factor to be considered. Grouping employees together could cause non-craft employees to occasionally be included in a predominantly craft unit. However, if the employees have been grouped on the basis of work, wage, hours of employment, etc., it will not matter than an employee who did not undergo a rigorous training program is included. The larger purpose of the grouping, homogeneity of interests, will have been accomplished.

The concept of common supervision has some claim as a factor to be examined by the boards, but actually it is unnecessary and its adoption is not recommended. The virtue of being able to submit complaints and problems to the supervisor can be available without this grouping if the union that represents a worker is aware of his problems. The lack of clearly defined criteria plus the failure of this solution to distinguish occupational problems offset any positive advantages.

The fundamental integration of a unit in the production process is a significant criterion which boards should consider in craft certification cases. Disregarding this standard could contribute to industrial friction, particularly in situations where there is close interaction between skilled and non-skilled workers.

To conclude, the boards should adopt a position of flexibility when making decisions on the craft issue. Utilization of the criteria as recommended above with the relative importance of each criterion depending on the individual case will assure this flexibility.

There is no satisfactory way that a legislature can enact guidelines for a labour board. The members of the boards have expertise in the labour relations area and are able to give experienced judgment to the individual cases. But the legislatures can express their wish that the boards become flexible in their craft certification decisions.

The legislatures can make known their desire that the boards look to the effect on the economy that a stream of decisions may have. If the supply of labour is being affected by board certification practices, or if industrial unrest is being precipitated by board practices, the legislatures can direct a change of position.

The boards should consider the impact of their decisions not only on the individual cases but on the entire industrial relations system and the economy.

VI. THE MULTI CRAFT BARGAINING UNIT

Craft bargaining units as they are presently constituted present many problems: they may retard technological change, foster inefficiency, contribute to jurisdictional friction and at times to industrial conflict. In view of all these possible shortcomings a serious reappraisal of the public course of action towards crafts is necessary. A number of alternatives for public policy towards the craft issue have been evaluated under the previous heading of this chapter. However, two public policy choices to the craft problem have been partly left out and are, instead, examined in this section: one option considers the maintenance of status quo in craft certification practices of labour relations boards, the other is based on the possible certification of multi-craft bargaining units.

The advantages and drawbacks of these two approaches are examined and a value judgment made as to the suggested course of action to be pursued.

A. The Status Quo Approach

The maintenance of the status quo within the context of this section refers to the continuation of present craft certification practices by the boards. Since present board attitudes towards crafts in industrial units can be described as anti-craft, status-quo would mean the continuation of anti-craft practices by labour boards. The pursuit of these practices can be defended on two grounds.

Firstly, these practices retard the growth of craft unions in their present form. Since crafts in any type of industry as presently constituted may contribute to feather-b edding, jurisdictional conflict and can be an obstacle to technological change, board practices which weaken crafts could be viewed as benefitting the economy. Secondly, maintenance of status quo and reluctance of the boards to restructure bargaining units could preserve industrial peace in the short run. Change in the relative power positions of industrial and craft units via certification could initially lead to industrial friction.

On the other hand, the present approach, as pointed out in previous sections, has serious drawbacks. Inter alia, sub-

merging crafts in industrial units does not necessarily lead to industrial peace but could contribute to industrial strife and may have an adverse effect on the supply of skilled labour.

The status quo practice does not recognize sufficiently the benefits⁶³ of maintaining a distinction between craft and non-craft employees. It is also discriminatory to newly emerging crafts.

The labour boards' anti-craft attitude towards the traditional crafts can probably be justified on the grounds of the past performance of craft unionism in Canada.⁶⁴ But the boards seem to oversimplify the issue by overlooking the costs of obliterating the distinction between craft and non-craft employees. What seems to be necessary in this area is a new approach to the issue of craft bargaining units; a solution which would maintain the distinction of craft from non-craft and at the same time minimize the costs of present craft practices. One suggested choice is for the boards to encourage the formation of multi-craft units.

B. The Multi-Craft Bargaining Unit

A multi-craft bargaining unit is defined as a group of employees possessing different skills who are to be represented for purposes of collective bargaining by one union.

The concept of a multi-craft unit is not entirely new. There were instances where the U.S. NLRB certified such units.

The Armstrong Cork Company⁶⁵ is a case in point. In this case the U.S. NLRB stated that:

"The unit sought by the IAM is essentially a multi-craft unit of maintenance employees. Although such a group may lack the inherent cohesiveness of a unit limited to employees of a single craft, it is clear that as a group composed mainly of maintenance craftsmen, the members possess interests in common, distinct from those of the production employees, which are sufficient to warrant their original establishment in a separate unit."

An examination of the benefits of the multi-craft approach would reveal that such units would preserve the distinctions between craft and non-craft employees. This would be achieved without some of the costs presently accompanying such distinctions. Crafts under such a system would have no reasons to be as hostile as they presently are to technological change. Seniority units could be widened and inter-firm mobility of labour increased.

Jurisdictional conflict among different craft unions would subside, although different multi-craft units might contest jurisdictions. However, in the transitional stages the jurisdictional frictions probably will be partly transferred from outside the single-craft units to inside the multi-craft units, and conflict for control of the unit might arise.

A proposal for multi-craft units would be incomplete without pointing out some of the problems that the implementation of such policy would entail. The existing craft unions

would strongly object to an approach which would eventually lead to the restructuring of craft unions, the disappearance of some, and the absorption of others into much larger structures.

The issues to be discussed in this connection are:

- (1) Hostility of craft unions to multi-craft units
- (2) The problems emerging during the transition
- (3) The problems after the transitions
- (4) The attitudes of the employers
- (5) Problems confronting the boards
 - a) How to define a craft
 - b) Single versus multi-plant or multi-employer multi-craft unit
 - c) The issue of an appropriate union
 - d) The implications of Board practices

(1) Hostility of Existing Craft Unions to Multi-Craft Units

Craft unions as presently constituted would clearly not be very favourably disposed to any board practices which would tend to disregard existing craft boundaries among crafts and include various craftsmen in the same bargaining unit. Such determinations would threaten the existence of craft unions in their present form and they would resist them. Their pressures would probably be felt in both the political arena and on the industrial relations scene. The undertones of the struggle of the crafts for survival along the traditional lines would also be heard in industry. Industrial unrest could be considerable in the initial process of adjustment to multi-craft units.

Opposition to the proposal could also come from industrial unions who would be uncertain about the impact of the transition on

their skilled membership.

One big stumbling block to a multi-craft bargaining unit determination by an outside tribunal like a labour relations board is the apprenticeship programs supervised by the various crafts. The bargaining power of these crafts is closely related to the supply of labour which they control through these programs.

The crafts, in fear of losing this control, would strongly oppose any outside effort leading to multi-craft bargaining units. Possibly in the initial stages of the transition, the programs could be continued in the multi-craft units in the same manner as they were conducted in the single crafts. However, the whole area of training, in spite of expected craft opposition, eventually, probably should be moved away from the craft unions towards a system of technical training supported by the government. Further examination of this proposition is beyond the scope of this study.

In spite of the initial opposition to multi-craft units from various quarters, in the long run the proposal could benefit not only the economy as a whole but craft and industrial unionism as well.

The impact of the board's anti-craft practices is very gradual, but if the present trend continues craft unions will be weakened considerably over time. Certification of multi-craft units could offset this process of craft decline through mergers of craft unions. The mergers could strengthen the powers of

crafts both at the political and collective bargaining tables.

Industrial unions could also benefit from the proposal. Whereas presently the organization of certain crafts by an industrial union is taboo,⁶⁶ under the new proposal they could attempt organizing them into multi-craft units separately from the non-skilled employees.

Losers of the multi-craft proposals could be union officers of some of the weaker craft unions which would merge with stronger craft unions.

Another serious problem would be the fact that the conglomeration of crafts that might be suitable in one industry would be different from what would be suitable in another. This, however, could be resolved by a wholesale restructuring of craft unions in which the current unions would be dissolved and new conglomerates formed of many different mixes of "old" skills. However, this development is not likely as unit determinations are made by place of employment and these would not or could not all be changed at once.

(2) Problems Emerging During Transition

The period of transition from the existing system towards multi-craft units would be difficult. Over time each craft has acquired a certain status and its members may feel that they are superior. In view of this they would probably be opposed to any change in their status. This should not be too much of an obstacle to overcome, since in the mass production industries

craft employees even now are frequently submered in large groups including unskilled workers. A multi-craft unit could in effect only add to their status and bargaining power. In some industries, the principle of multi-craft unionism is not new; in construction it appears in the form of multi-craft union bargaining. But even in industries such as construction certification of multi-craft units would initially encounter a great amount of opposition as the construction crafts conduct their own apprenticeship programs, some have retirement plans, etc.

In industries where bargaining is conducted along traditional craft lines a substantial amount of preparatory work would be necessary before the determination of multi-craft units could be initiated. An educational campaign would have to be launched first explaining the benefits of multi-craft units to craftsmen. Such campaigns could be conducted by the labour relations boards. In some industries there would be no need for any outside educational effort since the single craft unions themselves are considering merger plans which would lead to multi-craft units. Presently a number of unions in the printing industry are contemplating merger possibilities.^{66a}

(3) The Problems After the Transition

It can be argued that the suggested combination of skilled employees could raise some of the same problems affecting the supply of skilled employees that are present under the existing practice. This is to say that any grouping of different, albeit

similar, skills must create a minority group. Will the majority leadership be sensitive to the problems of this minority? A leadership that comes from a population of skilled employees will probably be more sympathetic to the equities of the intra-skill differential. The problem will most likely be less acute than under the presently disappearing skill-non-skilled differential. Because the overall skilled-non-skilled differential will be maintained, it would seem logical that the potential entrant would still prefer to enter the skilled labour force.

If the problem has some similarity to the present predicament it can probably be concluded that it is de minimus. A more difficult long run problem would be changing mixes of craft skills resulting from technological change and the needs for continual adjustment and rearrangement of multi-craft groups.

(4) The Attitudes of the Employer

Most employers probably have a very strong anti-craft sentiment. The problems associated with crafts which were discussed earlier would be responsible for this attitude. Inter alia, employees object to craft union-imposed restrictions on moving craft employees from job to job; they also object to the increased cost of separate bargaining with each craft and the real or imagined increased possibility of conflict when more than one contract is negotiated. Of course some employers have found craft unions to be helpful in taking over many of the personnel functions of the employer; training, hiring halls, etc.

In spite of some employer's attitudes, they are still con-

fronted at the bargaining table with single craft unions. What is suggested here is that employers could benefit from a departure from single to multi-craft bargaining units. Multi-craft units could help employers overcome many of the drawbacks discussed earlier which are associated with the present form of craft unionism.

(5) Problems Confronting the Boards

Any change in board practices towards crafts would present them with a new set of problems.

(a) How to define a craft --

How to define a craft and where to draw a line between skilled and non-skilled employees is a very difficult problem confronting the boards even now. The problem for the boards would be magnified with the development of multi-craft units and the inclusion of various skills in the same bargaining units. The issue of defining a craft by the boards is not discussed here since it is covered in a previous section of this chapter. Although the task of craft definition in the case of multi-craft units would be more complex than in the past, the difficulties would not be insurmountable. In practice, under the multi-craft system the boards would have to apply jointly rather than separately the criteria that they utilize now in certifying individual crafts, and be willing to change their definitions as technology and industrial organizations change.

(b) Single versus multi-craft or multi-employer
multi-craft units --

Whether to confine the multi-craft unit to an individual plant or certify multi-plant or multi-employer units would be another problem encountered by the boards. It is suggested that in view of the centralizing tendencies of industry and unions the larger unit should be favored whenever feasible. At times, however, the extent of union organization would have to be considered as a certification guideline. Probably the most appropriate criterion regarding the size of the unit would be to follow the boundaries of the bargaining units of the production employees, when such units are in existence. The U.S. NLRB, for instance, presently protects existing multi-plant or multi-employer units even if the group of employees applying for certification have not been included in any previously established bargaining unit. The U.S. NLRB assumes that the unit of such employees should coincide with the scope of a long established unit consisting of the same employer's other employees. An illustration of the U.S. NLRB practice is the case of Joseph E. Seagram & Sons.⁶⁷ In this case, the NLRB refused "to approve a proposed unit consisting of guards at only one plant of the employer because the production and maintenance employees at this and other plants of the employer had bargained for several years on a multi-plant basis."

(c) The issue of an appropriate union. --

Some Canadian Boards, like the Ontario Board⁶⁸, in considering an application for craft certification are taking

into account not only the appropriateness of the craft but also of the union to represent the particular craft. The adoption of the multi-craft certification would necessitate some legislative guidelines for Boards as to whether they should consider the appropriateness of the union for purposes of multi-craft certification, or if they should be willing to certify any union representing the majority of employees in a unit determined as appropriate by the Board. It is suggested that the Boards be directed, by statute, to recognize any union obtaining the necessary membership support as an appropriate bargaining agent. This approach could lead to intensive competition for membership, which, in turn, could lead to an increase in industrial friction. This, however, would probably not be a long-run phenomenon. It is felt that the benefits stemming from this proposal will be much greater than the initial cost of adjustment. Also, a greater choice of unions than presently available to craftsmen could only lead to a better representation of craft members.

(d) The implications for board practices. --

The multi-craft proposal does not suggest a complete departure from the current single-craft certifications. In some cases single-craft units are probably most appropriate from the point of view of the union, the worker, and the employer, and all these parties may be in agreement on the need for separate single craft certifications. In such cases the retention of present practices is favoured. However, there are many craft situations which are not that ideal and in those cases multi-craft bargaining units offer a workable solution.

C. Summary

To summarize, the movement towards multi-craft bargaining units will probably encounter many hurdles, but this is true of any change in established institutions. In spite of all the possible difficulties it is felt that the long-run benefit to the public, the unions, and the employers outweigh by far the costs of adjustment and transition.

It is suggested that the new approach, if adopted, be gradual. It is not proposed that craft employees be taken out of industrial unions and forced into separate units. There is no reason why they should not remain in the industrial unions if they are satisfied with the representation they are presently getting. But whenever they are dissatisfied, they should have an opportunity for separate representation.

VII. CONCLUSIONS

To conclude: in Canada it is virtually impossible for a newly emerging craft to gain separate representation under the present board practices. Somewhat easier, but still very difficult, is the task of a traditional craft group attempting severance out of an existing industrial union. It is recommended that the laws and practices be changed to allow more consideration of the merits of the craft cause.

Canadian labour boards should consider defining an employee as a craftsman on the basis of:

1. The length and rigor of his training program.

2. The nature of the work performed after training.

Once the employees have been determined as craftsmen, it is recommended that the boards make no automatic decision on the question of certification. Instead, the boards should look to the circumstances of the individual case and maintain a very flexible approach to the problem. This flexibility should be contained within certain guidelines. These are:

1. The community of interest of the employees.
2. The functional integration of the employment function.
3. The overall effect on the economy.

There is no satisfactory way to rank these criteria. The importance of any one of them will depend on the facts of the individual case.

Although the degree of unrest caused by many craft bargaining units may be less than generally believed, undoubtedly friction is generated by fragmentation and technology may be retarded by restrictive craft practices. The trend toward centralization should not be obstructed by craft units.

What is needed in some situations is reorganization of the craft employees to allow for craft representation without the present shortcomings which accompany craft unionism. This may be accomplished, in many instances, through the certification of multi-craft bargaining units.

To conclude, it is recommended that the craft issue be considered by the boards not only within the narrow context of the individual firm but within the framework of the overall economy.

FOOTNOTES

1. For an excellent discussion of the power structure, containing examples from American industry, see Arnold R. Weber, The Craft Industrial Issue Revisited: A Study of Union Government, 16 Industrial and Labor Relations Review, pp. 381-404, 1963.
2. Ibid
3. The Wall Street Journal, Friday, December 29, 1967, p. 13
4. See Dallas L. Jones, "Self Determination vs. Stability in Labor Relations," 58 Michigan Law Review, 313, 1960. Professor Jones contends that the extreme industrial unrest predicted for the United States fostered by a liberal Board severance policy failed to materialize.
5. The Canada Labour Relations Board (CLRB), the Saskatchewan Labour Relations Board (SLRB), the British Columbia Labour Relations Board (BCLRB), the Alberta Board of Industrial Relations (ABIR), the Newfoundland Labour Relations Board (NLRB), the New Brunswick Labour Relations Board (NBLRB), the Quebec Labour Relations Board (QLRB), are given no legislative direction as to how to exercise their discretionary power to determine craft status.
6. R.S.O. 1960, C 202, S.6.
7. See for example, International Association of Bridge, Structural and Ornamental Iron Workers, Local 721, affiliated with the American Federation of Labor, Applicant; and Art Wire & Iron Co., Ltd., Canadian Ornamental Iron Company, Ltd., Norris Iron Works, Ltd., The Pengelly Iron Works, Ltd., Shipway Iron Co., Respondents, Finkelman, for the majority, April 20, 1954.
8. Nova Scotia Trade Union Act, Sec. 9 (5) and Prince Edward Island Labour Relations Act. Ch. 8, Sec. 16 (1).
9. E. E. Herman, op. cit. p. 58
10. See for example the International Union of Operating Engineers, Local No. 703, Calgary, Alberta, applicant; and Canada Creosoting Company Ltd., Calgary, Alberta, Respondent; and International Chemical Workers Union, Local No. 405, Calgary Alberta, Intervener, A.B.I.R., March 18, 1957.
11. E. E. Herman, op. cit. p. 58
12. International Union of Operating Engineers, Local 796, and Northspand Uranium Mines, Ltd., CLRB, Ottawa, March 11, 1959.
13. Ibid.
14. E. E. Herman, op. cit. p. 54.

15. International Brotherhood of Electrical Workers, and International Association of Machinists, Applicants, and Canadian National Railways and Canadian Brotherhood of Railway Employees and Other Transport Workers, Interveners, CLRB, Ottawa, September 6, 1950.
16. E. E. Herman, Op. cit. p. 54
17. NLRB v. Pittsburg Plate Glass Co., 270 F2d 167, Cert. denied 361 U.S. 943.
18. Mallinckrodt Chemical Works, Uranium Division and International Brotherhood of Electrical Workers, Local #1, AFL-CIO, 162 NLRB No. 49.
19. Pervel Industries, Inc. and Machine Printers and Engravers Assn. of the United States 13 NLRB No. 140.
20. American Potash and Chemical Corp., 107 NLRB 1418, 1423.
21. E. E. Herman, op. cit., pp. 56-57.
22. Ibid., p. 60.
23. Manitoba Sugar Company Ltd., Employer; the International Union of Operating Engineers; Local 827, AFL, applicant; and the United Packinghouse Workers of America, Local 404, Intervener, NLR, Reason for Decision, March 15, 1951.
24. E. E. Herman, op. cit. p. 60
25. Ibid., p. 60
26. International Brotherhood of Electrical Workers, op. cit.
27. E. E. Herman, op. cit., p. 63.
28. See the Alberta Union of Operating Engineers, Local No. 703, Calgary, Alberta, Applicant; and Canada Creosoting Company, Ltd., Calgary, Alberta, Respondent; and the International Chemical Workers' Union, Local No. 405, Alberta, Intervener. ABIR, March 13, 1957.
29. E. E. Herrán, op. cit., p. 65
30. Ibid., p. 65
31. Ibid., p. 65
32. Ibid., p. 63
33. Mallinckrodt Chemical Works, op. cit.
34. Ibid.

35. Chrysler Corp. and International Society of Skilled Trades and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, Decision of NLRB Regional Director, Cases No.s 7-RC-8195 and 7-RC-8209 thru 7-RC-8211, August 1, 1967, 1966 CCH 97 21,718.
36. Harry Ober, "Occupational Wage Differentials, 1907-1947, Monthly Labor Review, August 1948, pp. 127-34.
37. Lloyd G. Reynolds, Labor Economics and Labor Relations, 4th Ed. Englewood Cliffs, New Jersey, Prentice-Hall Inc., 1964, p. 467.
38. Chester A. Morgan, Labor Economics, Homewood, Illinois, The Dorsey Press, Inc., 1962, pp. 120-121.
39. William Goldner, Labor Market Factors and Skill Differentials in Wage Rates, Berkeley: Institute of International Relations, University of California, 1958, p. 8.
40. Chester A. Morgan, op. cit., p. 121
41. Lloyd G. Reynolds, op. cit., p. 473.
42. Robert Ozanne, "A Century of Occupational Differentials in Manufacturing", Review of Economics and Statistics, XLIV, (August, 1962), pp. 292-299.
43. Business Week, McGraw-Hill, April 2, 1966, p. 10.
44. Allan F. Sale, "Estimated Needs for Skilled Workers", 89 Monthly Labor Review, April 1966.
45. Gertrude Bancroft McNally, "The Economy in 1966: II The Labour Force", 90 Monthly Labor Review, February 1967, U.S. Department of Labour, Bureau of Labor Statistics, p. 32.
46. Business Week, McGraw-Hill, January 15, 1966, p. 32.
47. Bruce W. Wilkinson, "Present Values of Lifetime Earnings for Different Occupations", 74 Journal of Political Economy, December 1, 1966, Vol. LXXIV, pp. 556-572.
48. Special Labor Force Report #84, "Occupational Mobility of Employed Workers", United States Department of Labor, Bureau of Labor Statistics, Washington, D. C. 1967, p. 38.
49. Neil W. Chamberlain, The Labor Sector: An Introduction to Labor in the American Economy, McGraw-Hill Book Company, New York, 1965, p. 460.
50. Simon Battenburg, "On Choice in Labor Markets", Industrial and Labor Relations Review, January, 1956, pp. 183-199.
51. See Dallas L. Jones, op. cit.

52. Chrysler Corp. and International Society of Skilled Trades and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO. Decision of NLRB Regional Director, Cases Nos. 7-RC-8185 thru 7-RC-8195 and 7-RC-3209 thru 7-RC-3211, August 1, 1967, CCH 97 21,718.
53. Nova Scotia Trade Union Act, Sec. 9 (5) and Prince Edward Island Labour Relations Act, Ch. 8, Sec. 16 (1).
54. Mallinckrodt Chemical op. cit.
55. Pervel Industries Inc. and Machine Printers and Engravers Assn. of the United States, 163 NLRB No. 140.
56. American Can Company, 13 NLRB 52.
57. See Senate Report No. 105 on 5.1126.
58. 76 NLRB 1199.
59. Permanente Metals Co., 89 NLRB 804, Corn Products Refining Co., 80 NLRB 362, Weyerhaeuser Timber Company, 37 NLRB 1076.
60. 107 NLRB 1418.
61. Mallinckrodt Chemical Works, op. cit.
62. Ibid.
63. This concept is not being evaluated here since the benefits of maintaining a distinction between skilled and non-skilled employees are discussed in another section of this chapter.
64. These facts are discussed in other sections of this chapter.
65. E. F. Beal, E. D. Wickersham, The Practice of Collective Bargaining, R. D. Irwin, Homewood, Illinois, p. 610.
66. The Ontario Labour Relations Act, Section 6 (2) stipulates that in case of craft certification the board has to consider the appropriateness of the unit. The Section refers to "A trade union that according to established trade union practice pertains to such skills or craft." The NLRB also takes into account the appropriateness of unions when certifying a craft unit. In the case of Mallinckrodt Chemical Works, Uranium Div. (14-RC-4564; 162 NLRB No. 48) Waldon Springs, Mo., Dec. 28, the NLRB stated that one of the criteria for craft certification is the "representation background of the union."
- 66a. "Union Mergers", Wall Street Journal, March 7, 1968.
67. Joseph E. Seagram & Sons, Inc. 101 NLRB 101.
68. E. E. Herman, op. cit., p. 53.

Preface to Chapter X
Material Provided by Bernard Brody

In this chapter, Mr. Brody makes a case for the fractionalization of national and system-wide bargaining units in the Province of Quebec. The other study participants justify this approach only as a political expediency, and not on the basis of economic or industrial relations arguments.

The conclusions reached in other chapters of this study favour the expansion of bargaining units. Obviously, these conclusions do not coincide with those expressed in this chapter. Nevertheless, since the bargaining unit issues in the Province of Quebec are unique, the authors have felt that a complete study of bargaining units should include the Quebec point of view, even at the cost of this work's uniformity of conclusions.

CHAPTER X

THE APPROPRIATE BARGAINING UNIT FOR QUEBEC

I INTRODUCTION

This chapter will examine the conflict between the relative appropriateness of the system-wide bargaining unit and the regional bargaining unit. For the past two years, several important applications have been made to the Canada Labour Relations Board (CLRB) by the Confederation of National Trade Unions (CNTU) asking for the Quebec section only of an existing national or system-wide bargaining unit. To date, the board has refused to grant such a fractionalizing. These rejections have resulted in severely strained relations between the CNTU and the CLRB, culminating in October, 1966, in the withdrawal of that labour federation's nominee from the board.⁽¹⁾

An attempt will be made to assess the results of past experience and to suggest possible accommodations and solutions.

(1) So emotional was the difference that the CNTU also withdrew all representatives on all federal bodies. The situation returned to normal (August, 1967) only after the minister of labour made a public announcement of impending changes to the federal labour statute...."to more clearly define the provisions of the act relating to the appropriateness of bargaining units and to reinforce the principle of fair and equitable consideration to all unions appearing before the Board." (Canada Department of Labour News Release #6635, July 27, 1967.)

II THE EXISTENCE OF A PROBLEM

What justification is there for singling out one of Canada's ten provinces for special examination of a bargaining unit problem? What precisely is the problem? Is there evidence of a situation requiring attention? What are possible solutions and what criteria can be used? What are the costs involved in adopting these solutions?

A. Evidence of a Problem: The Structure of Trade Unionism in Canada and Union Rivalry.

In all North America, only the Province of Quebec possesses two labour union federations. In Canada's nine other provinces, the Canadian Labour Congress (CLC) is the sole federation. In the United States, the (2) AFL-CIO occupies a similar position to the CLC.

Even prior to the merger of the AFL and the CIO in the United States (1955) and of the TLC and the CCL in Canada (1956), neither of the federations were rivals in the sense that rivalry exists in Quebec today. The AFL (TLC in Canada), the older union federation, was craft-oriented. The CIO (CCL in Canada) organized workers on an industrial or comprehensive scale. While there was extensive latitude for conflict, the rivalry was on a craft versus industrial bargaining unit basis. In Quebec, by contrast, the two central trade union federations, the CLC (its provincial federation is the Quebec Federation of Labour, QFL) and the CNTU are rivals in both the craft and the industrial sense. Thus we cannot fall back on (3) historical experience in seeking solutions to the current problem.

-
- (2) We omit the "Independent Unions", which although numerically significant (roughly 20% of total membership in each country) do not have central liaison bodies or federations.
 - (3) A thorough examination of some twenty-five labour textbooks and other, well-known publications reveals a total absence of the question of federation rivalry or regional unionism.

The CLC and the CNTU each naturally seeks to expand absolutely and relatively to its rival. Such expansion can come in two ways; in organizing the unorganized (confrontation possible when affiliates of both federations attempt to organize simultaneously), or through raiding (necessary confrontation). (4)

Inter-union rivalry exists all through North America. It is often observed among members of a single federation, and numerous examples can be cited within the past few years of such occurrences. (5) The CLC has been so troubled by this thorny problem that it created the position of "jurisdictional commissioner" (Montreal lawyer H.C. Goldenberg was named to the post) in efforts to accommodate raiding among its affiliates. (6)

"Raiding" per se is not necessarily a bad thing, nor is it to be consistently denied. Although inter-union and inter-federation rivalry involve extra organizing expenditures, efforts and time, meaningful benefits do flow from the existence of an adversary. Many of these benefits are similar to those which flow to the consumer from competition in the product or factor markets. (7) (8)

-
- (4) Contrary to popular usage of the term "raiding", the meaning here also covers cases of initiative on the part of members of the incumbent union as well as initiative by the "newcomer" union.
- (5) For example, the United Steel Workers raided the Moulders Union (Trois-Rivières), both CLC affiliates.
- (6) Article 8 of the CLC constitution (April, 1964) prohibits raiding except where voluntarily agreed to mergers or other mutually-acceptable arrangements can be evolved.
- (7) See T.N. Brewis et. al., Canadian Economic Policy, MacMillan, 1961, p.p. 29-33; also the Attorney General's Office, Economic Benefits of Competition, Washington D.C., 1955.
- (8) For a general description of the costs of rivalry see, General Council's Report, QFL Convention, Montreal, October, 1967, p.p. 23-29.

The members receive benefits because of the "courting process".

The incumbent is obliged to cater to the workers (consumers) in efforts

(10)

to maintain loyalty. Lester feels that one of the main sources of

union stagnation in the 1960's is the "taming" of unions through central-

(11)

ization of control and changes in union leadership attitudes. In

view of this tendency, are we to condemn activity which stimulates unions

and obliges them to fulfill the role which society has asked of them?

Society has, since the mid-1930's, given unions increased responsibilities

(12)

(power) for maintaining a countervailing force to that of management.

The means of this attempt to effect a greater balance of power has been

(13)

mainly legislative The determination of the appropriate unit for

bargaining, and in Quebec, the recognition of merits of a regional union

in some cases, can be a labour relations board policy rather than a

legislative means to achieve a more vital, dynamic and responsible organ-

(14)

ized labour movement.

(9) More will said about the effects of this process later in the chapter.

(10) R.A. Lester, As Unions Mature, Princeton, 1958, p.p. 20-34 - "The Decline in Militancy".

(11) For example, the merger of the AFL-CIO.

(12) See Woods and Ostry, p. 6, 7.

(13) It began with the Wagner Act (1935) in the United States, P.C. 1003 (1944) in Canada and the series of Provincial labour statutes recognizing unionism as a permanent institution.

(14) See S. Lens, The Crisis of American Labor, esp. p.p. 252 to 277.

Interviews with highly informed but disinterested labour specialists⁽¹⁵⁾ revealed that the quality and the quantity of services rendered to Quebec union members, especially where the incumbent (mostly QFL affiliates) survived the raid, increased substantially. With the new union, victor of a raid, services were also significantly ameliorated.⁽¹⁶⁾ Few interviewees felt that the Quebec labour movement was worse off because of the intensive rivalry.

The possession of uncontested political power, be it in civil government or in the trade union movement, may lead to complacency. The entrenched union may possess not only the negative aspects of political dominance, they may also be responsible for disadvantageous economic effects.

This is particularly true where the membership is almost entirely French-speaking and the regional, national or international leadership is English-speaking.⁽¹⁷⁾ Communications, the vital link and essential element of effective trade unionism, are most effective when the language used by the speakers (negotiators) is the one best understood by the membership.

(15) Summer 1967, Montreal, Toronto, Ottawa.

(16) It has been observed, however, that the CNTU, after its period of most intensive and successful raiding (1964-66), had grown much more quickly in membership than in its ability to adequately service those new members. Dissatisfaction was manifest by the City of Montreal white collar workers (1966), the M.T.C. bus drivers (1967). At the annual convention (November 1967) of the Syndicat des Fonctionnaires Provinciaux (26,000 members), a resolution proposing a vote to test members' confidence in their bargaining agent was withdrawn only after considerable pressure from the general executive. These repercussions are to be expected during periods of hectic growth. Adjustments can be anticipated.

(17) While language need not necessarily be a barrier, all other things being equal (i.e., ability to service membership), the rank and file would prefer to hear their highest officials in the members' own language.

Raiding may produce long-run benefits in one or several of the following areas:

- (1) to the membership directly concerned;
- (2) to the firm involved;
- (3) to the public (interest);
- (4) to labour-management stability (industrial peace).

The Canada Labour Relations Board, in determining the "appropriate" bargaining unit, should be translating into practical terms the policy of the statute from which it obtains its powers. As was mentioned earlier in this study, the I.R.D.I.A. is⁽¹⁸⁾ unfortunately not explicit as to its purpose. It is, therefore, not possible to ascertain, with any degree of precision, the intentions of the legislation (other chapters in the present study deal more fully with this question). It is thus not on the basis of the act that the four (above) areas are singled out. They have been conceived by the author.

It may not be an exaggeration to compare the need for a raid with the need for a strike. Both exhibit short-run disadvantages - disruption of production, conflict, instability - but the long-run benefits may far exceed the immediate losses.⁽¹⁹⁾ Usually mentioned as post-strike benefits are improved productivity, new approaches to labour-management relationship and to work problems and elimination of bottlenecks (the "catharsis" effect).⁽²⁰⁾

(18) The American Taft-Hartley Act, by contrast, begins with an explicit and detailed "declaration of policy" in which (1) union recognition, (2) collective bargaining, (3) industrial peace, (4) the public interest, and (5) freedom for the employee and other industrial relations objectives are spelled out.

(19) For one economist's ideas of the benefits for strike, see A. Rees, The Economics of Trade Unions, University of Chicago, 1963, pp. 34-37.

(20) For benefits to labour, see C.N.T.U., En greve, les Editions du Jour, Montreal, 1963, esp. pp. 7-20. See also, A. Kornhauser, et. al., Industrial Conflict, McGraw-Hill, 1954, p. 438.

The above discussion relates to possible improvements in services to union members where rivalry exists. Criticism of union rivalry has often been couched in the following terms. A successful "raider" will have to promise extraordinarily-large (exaggerated) negotiation gains in exchange for allegiance. But even here, however, the rivalry eventually benefits those for whom the union exists; namely, the union members. This "competitive-offer" process appears also to fit properly within the scope of North American mores regarding the interplay of competitive forces and our concepts of freedom and liberty. This competitive-offer process frequently leads, however, to industrial conflict, since the promises exchanged for allegiance can often only be realized through the use of the strike.⁽²¹⁾

On the other hand, none of the social sciences (including economics) has been able to define that which is termed above, an "extraordinarily large negotiation gain." It is not possible to differentiate between an "exorbitant" amelioration in wages and working conditions from a "proper" one. A better-than-"average" (i.e., better-than-recent settlements) settlement can be justified if conditions in that unit have been inferior to those for similar workers or if, for example, "hard times" are anticipated.⁽²²⁾ The multitude of economic and other complex factors bearing

(21) This was probably the major cause of the two-week strike of the M.T.C. bus drivers, Montreal, 1965. The CNTU won the bargaining rights from the incumbent who had held it for some twenty years. The "correctness" of the strike is too complex to decide here. However, it may be assumed that the historical lack of adequate servicing left a liability which had to be recovered quickly.

(22) The 30% wage increase granted to Montreal construction tradesmen late in 1966 was heavily skewed toward the final year of a three-year agreement; i.e., the post-expo '67 period. A marked decline in construction activity accompanied by unemployment, has been expected for this period.

on the final settlement are accounted for, though not necessarily explicitly, in the process of collective bargaining. Many of the forces which exist and which play an effective role in the final settlement cannot be isolated and identified. Some are not easily observed or analyzed, but make themselves felt in the power confrontation and resolution which lead to the collective agreement.

There are no clear standards in North America as to what constitutes a "just" or "fair" settlement.

That settlement is ultimately realized and acceptable which is finally agreed to by both sides after the full interplay of power forces.^{(23) (24)} The threat of a strike and the actual cessation of work (as well as the lockout) are legitimate elements of the resolution-by-power process which permeates our industrial relations system.

B. Manifestation of the Problem:

The discussion for Quebec concerns rivalry not only at the individual union level, but also at the federation level. The CNTU has 198,000 members constituting the following proportions:⁽²⁵⁾

-
- (23) Such power forces emanate from the following interested parties:
(1) the rank and file; (2) specific sectors thereof; (3) local union leadership; (4) national and/or international union headquarters; (5) the local management; (6) management headquarters, regional, national or international; (7) the public; (8) governments, municipal, provincial or federal; (9) competitor unions; (10) competitor employers.
- (24) For a description of the power process, see Woods, H.D. & S. Ostry, Labour Policy and Labour Economics in Canada, MacMillan, 1962, pp. 3-17, also N. Chamberlain, Labor, McGraw-Hill, 1958, esp., pp. 97-111 and 361-381.
- (25) Figures obtained from Canada Department November 1967. QFL membership (paid) of 199,000 was reported during the biannual convention, Montreal, October 1967, see General Council's Report, p. 27.

- (1) 10% of total Canadian Trade Union Membership,
- (2) 15% of C.L.C. membership,
- (3) 40% of total union membership in Quebec,
- (4) 100% of dues-paying membership of the CLC's Quebec Federation of Labour (QFL).

The rivalry at the federation level in the province of Quebec is thus between bodies of equal size.

Now that the underlying forces and the structure of rivalry have been dealt with, their implications for the determination of the appropriate bargaining unit can be undertaken.

(26)

The conflict, at the level of federal jurisdiction, is manifest in the following, typical situation:

- (1) There exists a national bargaining unit (affiliated with the C.L.C. and the QFL) covering employees of a single corporation.
- (2) Either by (a) CNTU initiative or by (b) the initiative of members of the incumbent union, an organizing drive is undertaken by the CNTU affiliate to sign up a majority in that part of the existing unit located only in Quebec.

(26) "The Bargaining Unit Problem for Quebec" concerns employees wholly within that province, but who are under federal jurisdiction; i.e., a request to carve out a regional unit from an existing national one. No examination is to be made hereof inter-federation rivalry when limited in all its aspects to provincial jurisdiction. An excellent quantitative study was recently made of this latter situation: see G. Dion, "Les concurrences syndicales dans le Québec", Relations Industrielles, Laval, January 1967, p.p. 74-85.

- (3) An application is filed by the CNTU with the CLRB for a certificate to represent "..... the employees in the Quebec part of the national bargaining unit. The fact that we have the support of a majority of the workers in the unit requested shows that it is indeed appropriate and a viable unit for purposes of collective bargaining. This freedom of association is guaranteed not only by article 3 (1) of the IRDIA, but also by the ILO (27) conventions to which Canada is a party".
- (4) The CLRB has invariably found that the carving out of the Quebec membership from the existing, national or system-wide bargaining unit is undesirable. The factors (28) which led the CLRB to grant the original certification were valid then and are still valid now.
- (5) "....the Board finds that the proposed unit of employees is not separately appropriate for collective bargaining. The (29) Application is rejected accordingly".

In the past three years there have been some ten cases before the CLRB which concern this typical situation. They are listed in (30) appendix II.

-
- (27) This is not a direct quotation from any of the applications. It is, rather, a highly representative reflection based on official CNTU publications and documents obtained from that federation.
- (28) An examination of these factors undertaken later in this chapter.
- (29) Quoted from a typical case: Syndicat général du Cinéma et de la Télévision (CNTU) applicant, Canadian Broadcasting Corporation, respondent, International Alliance of Theatrical and Stage Employees, Incumbent, January 12, 1966; underlining added.
- (30) See p. 2-4

The questions to be posed at this time are:

- (1) Does the situation described constitute an Industrial Relations Problem?
- (2) If "yes", is it a serious problem?
- (3) Are steps to be taken to eliminate the problem?
- (4) What are these steps?
- (5) What are the costs (in terms of new problems created) of possible solutions?
- (6) What are the costs of maintaining the present Board attitude?
(31)
A full discussion of the situation requires answers to the following additional questions;
- (7) Can we identify the losers and the gainers of (a) the present situation (b) a changed policy?
- (8) Are there "losers" and "gainers"?
- (9) Are there principles at stake?
 - (a) Freedom of association?
 - (b) The growth of the labour movement?
 - (c) The full interests of industrial peace?
 - (d) The best interests of the firms involved?
Their continued growth, stability and social and economic contributions to Canada?
 - (e) The fullest benefits to the citizens of Quebec?
 - (f) The fullest benefits to National stability, Unity?

-
- (31) Two attitudes could have been adopted in writing this chapter; the "Industrial-Relations-in-a vacuum" approach, or the "Environmental" approach. The former would seek solutions on the basis of industrial relations elements alone. The latter is more comprehensive, giving some weight to new developments in the political, social and cultural climates in Canada and especially in Quebec. "A full discussion" means that something more than the "vacuum" approach is selected. Indeed, in this chapter, aspects of both approaches are used. A fuller treatment of the two approaches is undertaken later in this chapter.

III THE ISSUE

The problem here is one of "regional unionism". This is to be differentiated from the similar-sounding term, "regional bargaining". The former means that unions limit their area of operation to a distinct geographical region. Regional bargaining can be carried on by a national union within a given region, and often involves all or most of the employers in a given industry (sometimes in cooperation with other unions as well).⁽³²⁾ The situation, then, is one of "regional unionism" versus "national unionism" as much as it is one of "splitting off", "carving out" or "fractionalizing" an existing bargaining unit. Although the CNTU has declared its intentions for growth in other provinces,⁽³³⁾ in fact membership is virtually limited to the province of Quebec alone.⁽³⁴⁾

(32) Regional bargaining is described by A. Kuhn, Labour: Institutions and Economics, (revised ed.), Harcourt Brace, 1967, p. 173.

(33) Interview, R. Sauvé, Secretary-Treasurer, CNTU, summer 1967, also numerous public newspaper releases.

(34) As at December 1967, the CNTU had 1,200 members in Ontario, 200 in Newfoundland and "a few" in New Brunswick (source: a telephone conversation with CNTU Head office), a total of less than 1% of total membership.

IV FRACTIONALIZING

A. Fractionalizing: A Hypothetical case.

In the cases listed in the appendix, the applicant union seeking a fractionalizing of a national bargaining unit is given the onus of proving that its proposed unit is either (a) more appropriate than the existing one or (b) that it is the only appropriate one. Aside from the vague principle that breaking up an existing system-wide bargaining unit would possibly introduce some element of instability, the CLRB has not given a clear outline of what it means by "convincing ground". (35)

The Board also seems to give much consideration to the fact that it had already found the existing unit appropriate when it issued the original certificate. It appears reluctant to entertain a new "appropriateness" even though, in some cases, as much as twenty years have elapsed.

In June 1967, the president of the CNTU laid a complaint before the International Labour Organization, Geneva, against the Canadian Government in general and the CLPB in particular. His argument centered about the CLRB's decision to reject the CNTU's application for a certificate covering the Quebec membership of an existing system-wide(CBC) IATSE bargaining unit. He is quoted as having told the ILO of "the Canadian Government's violation of the basic right to freedom of union association". (36)

(35) Angus shops case (appendix, case III) mineo p. 7. "Consequently in any particular case where it is sought to do this...(..."to subdivide a well established craft unit...") ... convincing ground for doing so should be established".

(36) The Montreal Gazette, June 8, 1967.

On what principles are based a contention that freedom of association is violated when the CLRB rules that the national not the regional bargaining unit is the appropriate one? Let us consider the following hypothetical example.

- (1) There exists a certified unit of 500 members.
- (2) One sub-group, six members in size, feels that it is not being properly serviced.
- (3) The largest sub-group is four hundred members.
- (4) Because of its lack of voting power, the six-member group is forced to accommodate itself to the desires and contract proposals of the large sub-group.
- (5) Working conditions, skills, training and other factors differ widely between the two sub-groups.
- (6) The six-member sub-group attempts to split the bargaining unit and become independently certified.

It is well-known that few existing bargaining units do not have this type of problem in their midst. (37)

B. Fractionalizing: Legal considerations.

How should a labour relations board look upon this request?

The raison d'être of a union is to provide workers with the power of collective action. Where the union cannot, for whatever reason, provide this power, two choices are then open to its constituents;

(37) This question is dealt with in greater detail in other parts of this study. For a penetrating analysis for implications of the size of the bargaining unit see, G.W. Brooks, "The Case for Decentralized Collective Bargaining", in R.A. Lester (ed.) labor, Randam House, 1965, p.p. 426-442.

- (1) to replace the present, unproductive agent by an effective one, or (38)
- (2) to abandon completely the idea of creating collective power.

The union must serve the member in the same way that the corporation serves the shareholder. The shareholder must receive dividends and feel his investment safe or he simply and freely abandons one corporation and invests his money elsewhere. It does not seem right that a governmental board should impose on workers an agent whom (a) they do not want, or (b) they believe is incapable of rendering the collective bargaining services they desire.

In our hypothetical case, the six-group felt that its legitimate grievances were being "traded off" in leadership efforts to please the (quantitatively) important constituency element (the four hundred-group) and that its contract proposals were seldom achieved. Can the labour relations board grant a split-off?

Boards have been motivated to carve out smaller units from existing large ones specifically concerning the stationary engineers. (39) Both in Canada and the United States boards have been known to permit the carving out of this "special" craft, but the practice is a dying one. (40)

(38) This latter option is applicable to occasions where, because of the anatomy of the situation (eg. too few employees, invincible anti-union sentiments of the employer, and industrial relations systems which for other reasons are by nature, not fruitful for unionization) inhibits effective unionism.

(39) Specifically, the Union of Operating Engineers. See E. Herman, The Determination of the Appropriate Bargaining Unit, Canada Department of Labour, Ottawa, 1966, p.p. 51-66.

(40) See an interesting paper by R. Gosselin, employee representative on the QLRB, Le groupe des mécaniciens de machines fixes peut-il constituer un groupe approprié au sens de l'article 20 du code du travail (mimeo.), March 21, 1966. This study, which is based largely on two QLRB decisions, concludes that, where an industrial unit exists the request to carve out the stationary engineers should be denied. (Cases: Judge Pelletier et al, Bathurst Containers, Nov. 6, 1960 (split permitted); Judge A.B. Gold et al Continental Can, Jan. 31, 1962 (split denied)).

In the Quebec bargaining unit problem the existing units are craft, not industrial, and the sub-groups desiring to be carved out are not identifiable on a craft basis from the existing unit (see appendix II).

In the Angus Shops case the CNTU presented a brief pointing out that the CLRB had already carved out local units from existing system-wide ones (Réponse du Syndicat National des Employés des Usines des Chemins de Fer, CSN, July 11, 1966). The brief also shows where the CLRB has certified, locally, employees of a national corporation. The document concludes with their key argument that the Angus Shops were sufficiently independent administratively (41) to provide management with a viable bargaining unit. (42)

In its "Reason for Judgement" the CLRB takes up some of the cases cited in the brief (pp. 8-9-10, mimeo.). The Board finds that where it did carve out a local unit, convincing grounds were provided. In one case (p.8) the nature of the (longshoring) operations had... "changed materially". In another, the certified bargaining agent had ignored the carved out sub-group in collective bargaining. The Board rejects "culture" as a convincing ground for carving out. It then goes on (p. 9) to say that (in the Angus Shops) existing bargaining agents were able to provide adequate services (grievance settlements and a high regard for, and use of French Canadian representatives at the upper levels of

(41) "Conséquemment, et pour résumer tout ce qui précède, nous croyons que les usines Angus doivent être considérées comme une entreprise autonome...". Brief (mimeo.) p. 4. (Underlining added).

(42) There is a side issue in the Angus Shops case which, though not completely relevant to the subject at hand, should be mentioned. The CNTU sought to create an industrial bargaining unit out of a bargaining unit in which members of no less than eleven craft unions were combined.

union administration). This opinion was based on..."evidence of the intervener craft unions..." (p. 9). But should the voting expression of the rank and file, the very constituents of the unions concerned, not also be taken into consideration in arriving at an assessment of the adequacy of services? How can it be concluded that services were adequate when 1,834 members voted to leave the incumbents and to join the applicant? Should not the expressed desire of the workers involved (51%) constitute the soundest criterion as to the adequacy of services?

It is not, incidentally, being suggested that the expression of the members or the adequacy of services be the sole determinants in the appropriate bargaining unit problem. It is, of course, important to examine other aspects the bargaining unit proposed by the applicant. Unions may sometimes design a bargaining unit so that the total number of known supporters constitutes a majority of the unit. This may have been the case here, although the Board does not dispute the proposed unit on these, "stacking" grounds. (43)

Freedom of Association

When a sub-group of the character described above is denied the possibility to secede, has freedom of association been violated? Is there a violation of this "right" as guaranteed by the Industrial Relations and Disputes Investigation Act (IRDA)?

-
- (43) The Board does question the inclusion of 155 stores employees "The work performed by the stores employees and the nature of their qualifications required appear to have nothing in common with those of the Angus Shops craft employees". (p. 6 mimeo.). It would have been useful for "on-the-spot-research" to have verified this opinion. In what way do qualifications differ? The fact that they were not party to the overall agreement (Division 4) should not of itself have been sufficient grounds to "disprove" homogeneity with the shop employees.

A close examination of the IRDIA article 3 (1) is in order. The related articles of the Quebec Labour Code (QLC), The Ontario Labour Relations Act (OLRA) and the Taft-Hartley (USA) Act is also profitable. (44)

I IRDA, Art. 3 (1)

"Every employee has the right to be a member of a Trade Union and to participate in the activities thereof".

II QLC, Art. (3)

"Every employee has the right to belong to an association of employees of his own choice and to participate in the activities and management thereof".

III OLRA, Art. (3)

"Every person is free to join a Trade Union of his own choice and to participate in its lawful activities".

IV Taft-Hartley Section 7

"Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representative of their own choosing and to engage in other concerted activities for the purpose of collective bargaining...".

In the last three acts, the underlined words appear to give powerful argument in favour of choice of a union by the individual employee. For those versed in the procedure of the selection of a bargaining agent (i.e., the certification process), this proves to be at the best an impotent right. While the law does not impede a worker from holding membership in a union of his own choice, (45) the "slip twixt the cup and the lip" in this

(44) These are the "Freedom of Association" articles. (Underlinings added).

(45) The IRDIA does not even go this far. All it guarantees is freedom to join a trade union...., perhaps chosen by someone else?

matter is that the trade union "of his own choice" may have absolutely nothing to do with the collective agreement (if one exists at his place of work) which regulates his wages and working conditions. The fact of the matter is that freedom of association need not mean choice of the bargaining agent. The choice of the agent is made by (1) the majority of the workers in (2) a bargaining unit defined by a labour relations (46) board. It is not made by each worker, nor is this kind of freedom guaranteed by North American labour laws. Thus the freedom of association is truly an "impotent right" because the association (freely adhered to by any worker) may not obtain the rights to bargain for that worker. Since the raison d'être of a trade union is to attempt by establish wages and working conditions according to the desires of its members, the "impotent right" description seems appropriate.

(47)

Professor Woods raises a similar point when he states that ".... a union including less than a majority of the employees in the unit is not only barred from certification and compulsory recognition, but is also denied the right to use joint economic action to try to force recognition from the employer, a right which it did possess prior to the (48) appearance of the present labour relations laws". This is the result of the certification process and may be termed "the exclusive representative rights".

(46) Most labour statutes give very wide discretionally powers to the boards in determining the "appropriate" bargaining unit. Any restrictions (craft bias, multi-employer, definition of "employee") are minor.

(47) Woods & Ostry, p.p. 114 to 120, esp. p.p. 118 to 120.

(48) Ibid., p. 119

Thus, in answer to the questions posed on P. 17 as to whether a denial by a board to recognize the desire to secede and (a right of "freedom of association") belong to a trade union of one's own choice, the law is very clear; such a right exists but is impotent.

To return to specifics once again, when the CNTU contends that the Board acted unjustly in denying the Angus Shops employees or the Quebec CBC IATSE or ANG members their rights of association, the accusation must be rejected. In simple terms, any employee can freely tear up his IATSE membership card and sign up with the SGCT, but this gets him absolutely no closer to having the SGCT as his chosen bargaining agent. Firstly, the Board, in this instance has said that the system-wide unit not the regional unit is the appropriate one and secondly even if the CLRB should reverse its policy on the national unit, at least 50%-plus-one of his fellow workers would have to feel and act as he does (i.e. join the SGCT and leave IATSE).

This raises a question whose consideration, although inexorably linked with the Quebec bargaining unit problem, cannot be discussed here for lack of space. Is the law providing true freedom of association of the worker in the choice of his bargaining agent? The answer is of course, "no".

Would it be too radical to suggest that consideration be given to altering the existing legislation so as to provide and respect such a freedom by terminating the present principle of exclusive representation rights? (49) If this is not deemed desirable, then it should be made clear that the freedom of association, while existent, is often impotent.

(49) In a number of European countries, exclusive representation rights do not exist.

The above argument is not as clear-cut , however, as it appears on the surface. The opponents of severance of small units out of large bargaining units would claim that the protection of the rights of minority groups to freedom of association and separate representation may deprive the larger groups of the very rights that the smaller group seeks for itself. This would particularly be true in instances where a union has a marginal majority in the larger unit.

As a hypothetical example, let us take a unit of 500 employees where 251 employees desire union representation. However, 50 of the workers would prefer to be represented in bargaining units separate from the other employees. If a labour relations board would recognize the wishes of the minority group (50 workers), the other 201 workers desiring union representation would be denied this right because they would now be a minority in a unit of 450 employees.

C. Fractionalizing: The Quebec/CMTU Case

The following is an analysis of CLRB judgments, especially the elements bearing on the arguments as to the relative appropriateness or inappropriateness of the national bargaining unit and the regional bargaining unit.

All the cases cited concern an existing, national bargaining unit and a request for a new certificate covering only the Quebec members
(50)
of the system-wide unit. The problem is whether the Quebec employees

alone constitute a viable or appropriate bargaining unit. In each of the fractionalizing attempts a majority of the workers in the proposed unit supported the applicant. The requests have come consistently from CNFU affiliates and the incumbents have always been QFL affiliates.

CLRB Policy

To date the Board has steadfastly refused to split off the Quebec employees from an existing system-wide bargaining unit. The philosophy behind this policy is clearly laid out in two cases: IATSE/
(51)
SGCT/CBC (case Ib) and Angus Shops (case III).

"The views of the Board with respect to the subdivision of established system-wide craft and technical units of employees have been set forth in the Reasons for Judgment by the Board in the case of the BLEP and the CPR.....

(50) The appendix also contains cases where no carving out is asked for but these deal with the same bargaining units in question; they are relevant to our discussions.

(51) The following excerpt, the core of the policy, was quoted in both these cases and comes from the Reasons for Judgment: Brotherhood of Locomotive Firemen and Engineers and the CPR, see CLLC 1949-54, par. 16023. The BLEE had applied for a regional certificate to carve out locomotive engineers from an existing system-wide unit. The CLRB rejected the application.

"The Board is of the opinion that ordinarily it is not conducive to the establishment of stable labour relations or orderly collective bargaining negotiations to subdivide a well established craft unit of employees found to be an appropriate unit by the Board, into several units consisting of segments of the same craft group of employees. Consequently in any particular case where it is sought to do this, convincing ground for so doing should be established".

The analysis will concentrate on the following key expressions; "ordinarily", "well-established", "craft", "found to be appropriate", and "convincing grounds".

"Ordinarily", fractionalizing is undesirable. This intimates that in extra-ordinary cases the Board should be disposed to look favourably on such an application. What constitutes an extra-ordinary situation? Fortunately the answer can be gleaned from the remainder of the quotation.

Fractionalizing is not condemned when "... a well-established craft union of employees..." is broken up and the action is (rather than"... is not...") "...conducive to stable labour relations or orderly collective bargaining...". It appears then that long run stability is the primary determinant of an extraordinary situation. But the establishment of long run stability could, conceivably involve short run instability and still qualify as an action conducive to stable labour relations, etc. Fractionalizing, ceteris paribus, even if it does lead to short run instability, should, not per se, be denied.

...

In the cases cited in the appendix, applications for the fraction-
alizing were supported by a majority of the workers, members of the
incumbents. Dissatisfaction with existing bargaining arrangements was
thus manifested and quantified in terms of membership in the applicant
unions. (52)

There already existed within the established units a high degree of
instability. Assuming that a rupture of the system-wide bargaining unit
would, initially, not promote stability in labour relations or encourage
orderly collective bargaining, was the Board convinced that the denial of
the splitting off of the Quebec membership had ensured continued or long-
run stability?

The denial of a request from a substantial number of workers for
self-determination in the selection of a bargaining agent is, as the
Board points out, a serious gesture. Surely there should have been
a greater investigation into the long-run implications of the fraction-
alizing. A relative weighing of the elements leading to long-run stabil-
ity (satisfaction for the workers, an agent closer to members geographi-
cally and in terms of location in Canada's social mosaic, a decentralized
decision-making apparatus, heightened homogeneity of the bargaining union
leading to increased bargaining power, etc.) and to long-run instability
(firm's dissatisfaction, obstacles to inter-unit (union) promotional and
transferability lines, possible continued inter-union rivalry, etc.)

(52) Even if the applicants did "stack the cards" in selecting a unit
which gave them a majority - and this is not contented by the Board -
the fact that close to 2,000 employees of the Angus shops (Case III),
some 250 IATSE-CBC employees and about 45 of the ANG-CBC employees
expressed their desire to alter bargaining units is significant.
These are large groups of workers.

should have been explicitly undertaken. Too much of the Reasons for Judgement reports deal with the history of the situation. Almost no discussion is undertaken on the consequences of (1) the consenting to a fractionalizing, or (2) the denial of such action. Surely in a dynamic world, in a Canada strained politically as never before, in an economic climate where change in the rule and lack of movement the rare exception, a Board hearing cases dealing with so variable an area as labour-management relations should be prepared to act in harmony with such dynamic manifestations. While it is readily recognized that the existing or even past structure, relationships and performances should be taken into account in assessing the appropriateness of a proposed bargaining unit, serious attention to the current events and to the possible consequences of decisions should constitute an important element of the criteria used.

Is it conceivable that, in view of the existence of an application to fractionalize, in view of the support received from the workers concerned, that some value could have been given to the potential long-run stability effects and orderliness which could have flowed from the new arrangement. That there exists a high degree of malaise and instability with the existing bargaining unit, could have encouraged the Board to look more favourably on the advantages of a split.

While the opinion of the respondents - consistently opposed to a fractionalizing - should be taken into consideration, one wonders if perhaps too much weight was given to their arguments? (53)

(53) "The Respondent states that it does not recognize the existence of any problems with respect to the group of employees in the Quebec Division....that are manifestly different" from other employees in the same classifications. (IATSE/SGCT/CBC case 1b).

Although it is recognized that a fractionalizing of the existing bargaining unit would necessitate adjustments on the part of the employer, such adjustments could surely have been accommodated. Would the costs of such accommodation be prohibitive? Surely the existence in Canada of a multitude of "split units" (i.e., one employer, many units) testifies that system-wide units are not sacrosanct. If the Board were primarily concerned with the transition period, one would have to agree that the splitting off would necessarily involve instability and disorder, but any change has these results.

The second key element in the Board policy refers to "... a well established craft unit...".

In case Ib (IATSE/SGCT/CBC), while the incumbent is looked upon as a craft union and the unit as a craft unit, a more penetrating analysis of the composition of the unit reveals a marked absence of the normal meaning attributed to the term "craft". Rather than a group revealing a high degree of homogeneity we find very diverse titles, skills, educational levels, and emotional and intellectual job demands. The IATSE/CBC (54) collective agreement shows 27 classifications.

The titles vary from "make-up artist" to "truck driver", from "TV coordinating producer" to "carpenter". In numbers they range from six (coordinating producers) to some 400 (stagehands). The qualifications run from "equivalent of a university degree" (coordinating producers), to the mastery of a mechanical trade (painter), to no specific skill ("driver helper"). The range of working conditions is also as varied

(54) Collective agreement, 1960-61, p. 2

as one can possibly imagine. There are classifications with day shifts only, night shifts only, weekends off, no weekends off, etc. Some classifications require a high degree of outside work (film cameramen operate throughout the world), while others never leave the main building. Wage classifications range from \$5916-\$7581 (Senior film editor) to \$2699-\$3135 (designer's helper).
(55)

It could thus be concluded that this is no true craft unit of employees in the generally -accepted sense of the term. Webster (56) defines "craft" as "those engaged in any trade taken collectively, a guild". Surely the whole concept of a craft union and a craft unit implies a very high degree of homogeneity in the skills, working conditions, level of remuneration and especially in the training of those so designated.

These qualities are clearly absent in the unit accorded to IATSE. It may be argued that this profound heterogeneity was less pronounced in 1953 when the Board created the unit, a "potentially troublesome" situation could have been envisaged. The other large bargaining units at the CBC, NABET (technicians) and ARTEC (office employees) are truly of homogeneous compositions.

In view of the above it should come as no surprise that the first attempt at decertification within the IATSE bargaining unit came only four years after the original certification order (1957). At that time

(55) Taken from 1962-63 agreement. Through figures are out of date, the enormous differential is obvious and still valid.

(56) Webster's Collegiate Dictionary, 5th edition.

a formal attempt to decertify IATSE failed, although more than a majority of those in the unit originally supported the move. An application was placed before the Board and the latter ordered a vote. A majority in Toronto voted in favour of decertification; in Montreal a majority voted against decertification. The Montreal action was a reversal of the attitude shown by those employees in earlier internal negotiations. (57)
(i.e. a majority in Montreal had signed letters of resignation from IATSE).

The vote taken during the CUPE application for the system-wide IATSE bargaining unit (February, 1967) showed that only 439 out of 1668 eligible voters asked IATSE to continue as bargaining agent.

While all the above arguments might lead to the simple conclusion that IATSE was a poor bargaining agent, and that the bargaining unit was in fact, nevertheless appropriate, consider the following further evidence and the hypothesis which ensues.

An examination of the relative wage scales, over the years, between the NABET bargaining unit and the IATSE bargaining unit shows a steady and substantial erosion of the initial positive IATSE differential.

This is especially noticeable at the highest classifications: IATSE's coordinating producer and NABET's senior (group III) technician. In August, 1957 there was a \$100.00 differential in favour of the coordinating producer (IATSE) category. By January, 1965 the senior technician's (NABET) top salary was superior by \$641.00. (58)

(57) Facts obtained from a conversation with Yvon Dansereau, formerly business agent of Montreal IATSE local 878, December, 1967.

(58) Figures derived from collective agreements in force at those dates are taken from a private study by the author.

It would thus appear that the bargaining power of the IATSE unit was significantly inferior to that of the NABET bargaining unit.

The hypothesis flowing from the evidence of the past few pages is this: that the bargaining power of the original IATSE bargaining unit - deemed "appropriate" by the CLRB was largely dissipated and markedly inferior to the bargaining power of the employer. This was due to a lack of homogeneity of the subgroups lumped together in 1953. There is also considerable evidence ⁽⁵⁹⁾ that homogeneity was absent as between the regional divisions. It is not too risky to propose a causal relationship between the lack of craft homogeneity and the absence of regional cohesiveness.

In the IATSE/SGCT/CBC case (appendix II case I (b)), a further hypothesis could be advanced. If regional incompatibilities were eliminated; i.e., if, on a regional basis, there were no need to compromise, could not we expect that the resulting increased homogeneity would also increase the bargaining power of each of the units thus created? ⁽⁶⁰⁾ This system-wide bargaining unit, it is proposed, would be weak even if the incumbent agent were replaced by a more serious one. In the Angus Shops case (appendix II, case III) employees are members of some 10 or 11 different craft unions. These unions are, in turn, members of Division 4, Railway employees Department, the certified agent for most of the employees asked for in

(59) Conversation, Yvon Dansereau, op. cit.

(60) The author recognizes that there are determinants of bargaining power other than homogeneity. However, this is an important factor, and given the "control", NABET unit, it emerges as the key factor here.

the request to fractionalize. Here again, by coincidence (?), we find a high degree of heterogeneity in terms of craft, skill and working conditions. Granting the application would have created a smaller unit geographically, again, likely, with increased cohesiveness, easier access to headquarters, and probably heightened bargaining power.

The suggestion to release the Quebec employees of existing national bargaining units would have the homogeneity-creating effect at least of eliminating the geographical, language and cultural⁽⁶¹⁾ aspects of heterogeneity. Before anyone builds up illusions of the fractionalizing of every national or even multi-provincial bargaining unit (in federal jurisdiction), a fact should be made clear here. The prerequisite to any application for a carving out is of necessity evidence of substantial membership in the "newcomer" union. Thus, we can expect applications for splitting up national bargaining units only when the employees concerned ask for it. This is the prerequisite.

When employees are properly serviced by the existing bargaining agent, in the existing type of bargaining unit, there will be no fractionalizing problem. Only where an undesirable situation exists, can fractionalizing become a possible solution.⁽⁶²⁾

(61) When all other criteria point to a maintenance of a national bargaining unit, the cultural aspect alone should not outweigh the others. However, where there are other reasons for splitting the unit (e.g., desires employees, need for increased bargaining power (where it is lacking and where the board feels a fractionalizing can increase bargaining power of the new units), sufficient administrative management autonomy, etc., surely the existence of two cultural groups in a single unit should lend some weight to the split.

(62) The final two key phrases of the BLEP decision "....found to be appropriate...." and "....convincing ground...." are taken up in a later section of this chapter, see p. 376.

V THE COSTS OF FRACTIONALIZING

Some of the positive elements of fractionalizing have been dealt with above. There are, of course, certain negative effects or costs. (62a)

Cost One: Current Trends and Forces Bargaining Unit Dynamics

The most serious possible cost of fractionalizing can be treated not as the system-wide-versus-Quebec Unit problem but in the broader context of larger units-versus-smaller units.

An important economic criterion on which to base public policies for determining future bargaining unit shape and size can be the changing size (measured in number of employees) mix of Canadian industrial establishments. (63)

It would hardly be rational to recommend a "smaller bargaining unit" policy in the face of a significantly high growth rate in the larger plant proportion of Canadian industry. It would prove unwise, on the other hand, to encourage formation of larger bargaining units when the

(62a) Probably the most important cost - the introduction of barriers to optimum resource allocation (i.e., rigidities) - is dealt within the conclusions, p. 355.

(63) Aside from this size of "establishment" (i.e. the plant), alternative measures could be size in numbers of employees of the corporation, i.e. all plants of a single organizational owner; size in terms of value of output of plant; or even size in terms of value of capital investment of plant or corporation. The numbers of employees per plant was selected as the relevant measure because (1) we are concerned with membership in bargaining units; i.e. employees (2) most bargaining units are individual plants (see other parts of this study), (3) employees per establishment is highly operational, available in sufficient detail and historical time series.

evidence shows that smaller production units are growing more rapidly. This section of the chapter looks only at the narrow, plant size/bargaining unit dimension relationship. It recognizes that there are other extremely valid criteria on which to base policy.

Using this criterion necessitates an analysis of trends concerning
(64)
the changing size mix of Canada's production units.

1. International Bargaining Units

Speaking on the desirability of international productive units, a
(65)
Canadian economist recently stated; "Generally speaking... with the trends towards common markets and regional approaches, multi-national companies do make sense. Larger markets offered by these groupings reduce the risks of investment in research and development, which in itself should benefit the host country as well, and these regional groupings lead indirectly to large scale production activity".

(64) Two highly relevant points must be made at this time. 1. Although this chapter is concerned mainly with the Quebec bargaining unit problem, it has been decided to include this more general examination of bargaining size. It will undoubtedly shed some additional light on the relative need for system-wide or regional (Quebec) units. Another reason for its inclusion here is that it constitutes a rather unique viewpoint from which to examine the changing dimensions of the bargaining unit. 2. The analysis of the Canadian industrial structure by size (number of employees) of (manufacturing) establishments in efforts to assess a policy choice of encouraging either large or small bargaining units assumes implicitly that the usual bargaining unit is the individual plant given the existing Canadian situation in this regard (i.e. high degree of local, plant contracts) such an assumption is not unrealistic.

(65) Dr. George Korey-Kvzeczowski, speaking at the 6th annual Pan American Conference for the International Council of Scientific Management (Quoted in the Montreal Gazette: June 22, 1967).

....

The recent automobile free trade agreement between Canada and the United States may be used as a polar starting point. This is an unusual situation, involving, as it does, extranational considerations. With the advent of industrial consolidation between parent establishments (in the USA) and their subsidiaries (in Canada) dare we think not only of system-wide national bargaining units but indeed of international bargaining units?

2. Purely Domestic Units

If these two examples of a growing interest in larger organizational and productive units do not suffice, a third major instance of this seemingly inevitable trend will perhaps establish the point.

The effects of the Kennedy Round (the international bargaining on a general reduction of world tariffs which has been going on in Geneva for some years now), if finally fully adopted, could provide a stimulus to greater industrial specialization and a higher degree of industrial concentration. This avenue may prove attractive as the best means to achieve the continuously-sought-after lower per unit production costs from both internal (to the firm) and external (to the firm) economies (66) (where such economies exist).

(66) "Internal economies" refer to lower average unit costs achieved by building and operating the optimum-sized plant. Canadian producers have always complained that the domestic market is too small to support an optimum-sized plant. Greater access to foreign markets could provide a solution. "External economies" mean lower unit costs because of changes in the industry (new entry or exit) rather than from within the firm. For a basic discussion on this topic see R.H. Leftwich, The Price System and Resource Allocation, 3rd Edition, Holt, Rinehart, 1966, pp. 143-46 and 171-77.

Some observers look to increased specialization by Canadian manufacturers and a higher degree of concentration as the most effective means to meet the expected changes in international tariff structures. The importance of external trade to Canada can be pointed out by simply giving imports or exports as a proportion of the Gross National Product. The Canadian figure is some 25% (5% for the United States).

A well-known Canadian business leader has advocated a serious relaxation of Canada's anti-combines laws.⁽⁶⁷⁾ "I suggest that we have been relying on the theory of competition as the central, organizing and regulating force in our economic system, when, in fact, we do not generally believe in it or apply it within that system. We repeat that it is a simple 'objective' test which can be applied by judges who are unwilling or unable to adjudicate on economic problems, but the fact is that this is an exercise in economic control and these statutes deal with economic theories, and, in their application, must receive an economic interpretation. In the result we have adopted a test for the public regulation of business which is unrealistic, narrow, mechanical and largely unworkable."⁽⁶⁸⁾

The statements of the past few pages appear to lead to the following sequence: (1) both domestic and international economic pressures are being built up with the object of promoting greater industrial concentration in order to meet international competition.

(67) Robert Fowler, President, Canadian Pulp and Paper Association, "The Future of Competition in Canada - A Businessman's View," in Deutsch, J.J., et. al., The Canadian Economy, MacMillan, 1962, pp. 63-75.

(68) Ibid., p. 71.

(2) (As per previously stated hypothesis) Since Canada's industrial structure is to be altered in the direction of greater concentration of organizational and plant productive capacities, therefore, the size and shape of the bargaining unit should also be expanded. CLRB policies should encourage developments in that direction. This leads to the conclusion that attempts to introduce fractionalizing policies would in general, run counter to desirable economic forces. Thus, advocating a policy encouraging the separate certification of Quebec workers out of existing system-wide units would be irrational. To permit fractionalizing would impose unnecessary rigidity costs on Canadian industry as well as raising the possibility of heightened industrial conflict. In short, the bargaining unit size should follow the trends in the industrial unit size, namely, enlargement. Although based here on no statistical evidence regarding recent and future changes in corporation (as opposed to establishment) size, this would seem a highly probable and desirable trend. Deviation from this tendency in the creation of a bargaining unit policy would indeed be irrational.

There is, however, a counter argument which bears some discussion. A significant difference from the above trends and conclusions is to be found in a recent publication of the Private Planning Association of Canada.⁽⁶⁹⁾

The study discusses adjustment policies designed to adapt Canadian industry to a liberalization of world tariffs. In considering the effects of GATT, the (specific) Kennedy Round proposals, and the U. S.-Canada auto free-trade agreement, these adjustment mechanisms are outlined (p. 380).

(69) H.E. English, Industrial Structure in Canada's Competitive Position, Montreal, 1964.

One of the suggestions deals with rationalization schemes of the types discussed earlier (to put Canadian industries in better (lower) cost positions, enabling them to compete more effectively). The study does say, "Temporary agreements, permission for which might require amendment of the combines laws could prove a useful means for selection of specialties by Canadian firms which had previously produced a range of competing products in the same industry."⁽⁷⁰⁾ This would tend to advocate complementary "rationalization" in industrial relations structure, i.e., a policy of encouragement of larger bargaining units and a discouragement of the development of smaller bargaining units. However, the English study adds a qualifying rider to his permissive advice on rationalizing Canadian industry. "Such a program would likely be effective only in circumstances where complete or almost complete tariff elimination is under way, since it is the combination of the means to cooperate with the pressures and opportunities of international competition which is required to ensure effective rationalization. Without the competitive pressures there is no sure guarantee that all of big firms will cooperate in an appropriate rationalization agreement, and there is a danger that any agreement they do make will not be in the consumers' interest."⁽⁷¹⁾

It is to be noted that there is no mention in the Fowler argument that tariffs be lowered so that the forces of international competition can ensure both consumer sovereignty and consumer choice. The pressures for industrial rationalization emanating from Canadian business seek

(70) Ibid., p. 380.

(71) Ibid., p. 381.

"... the relief from economic insecurity and the reduction of risks..."

The intent of the Combines Investigation Act is that the market alone should be the judge of what is good for the economy. It frowns on excessive private economic power. (73)

It would thus not appear likely that public policy will permit a lessening of competition in Canada by facilitating extensive rationalization of our industrial structure without a counterbalancing mechanism ensuring a high degree of competition from foreign producers. Since the latter possibility is remote, even in these days of tariff reductions, so is the former proposition. A permissively-oriented combines policy is only advocated in the face of extensive and substantial realized international competitive forces; i.e. "... complete or almost complete tariff elimination...". Even taking into account the results of the most recent Kennedy Round talks (ending June 30, 1967) the effects are not highly significant. "In terms of tariff barriers, the Kennedy Round has certainly provided Canadian manufacturers with easier access to the major industrial markets of the world. At the same time a relatively high degree of protection has been retained for large segments of the Canadian market. For other Canadian manufacturers who have lost protection to a significant degree there are offsets in the form of reductions of duties on materials, intermediate products and machinery". (74)

(72) See Fowler, Ibid, p. 65.

(73) L.A. Skeoch, "The Combines Investigation Act: Its Intent and Application", The Canadian Journal of Economics and Political Science, February 1956, pp. 13-33.

(74) Bank of Montreal, Business Review, July 31, 1967, p. 2. (Underlining added).

The conclusions of the past few pages do not point to any significant rationalization of Canadian industry in the foreseeable future.⁽⁷⁵⁾

On this basis, it would not appear logical to promote a public policy in the direction of a rationalization of Canadian bargaining units.

Having discussed some of the pros and cons of industrial rationalization, let us now consider the ex-post, actual trends in the structure of the Canadian economy. Has there been a marked tendency towards industrial concentration?⁽⁷⁶⁾

Despite a seemingly general feeling to the contrary, there is evidence to show that the larger sizes of Canadian establishments (in terms of the number of employees) have not grown over the past thirty-five years. An examination of the table and graph of Appendix IV (p. 1) shows that there has been no growth in the larger-sized plants nor has there been a spectacular contraction in the smaller-sized plants.⁽⁷⁷⁾

(75) There have been a certain amount of Canadian writings on combines policies. Few objective studies have recommended the elimination of competition and the fostering of higher degrees of concentration. It is held that the cost in terms of a loss of consumer sovereignty would far outweigh any possible gains from potentially lower prices. See, L.A. Skeoch, "The Combines Act," CJEPS, Feb. 1956; S. Stykolt, "Combines Policy," *Idem.*; G. Rosenbluth and H.G. Thorburn, "Canadian Anti-Combines Administration 1952-60," CJEPS, Nov. 1961; I. Breccher, "Combines and Competition: A Re-Appraisal of Canadian Public Policy," Canadian Bar Review, December 1960, pp. 523-593. There have been other writings too numerous to catalogue here.

(76) As mentioned earlier, concentration, as measured here refers to changes in plant size. There are other, perhaps, even more meaningful measures of concentration. The time constraint prohibits a complete discussion here. (See E.A.G. Robinson, The Structure of Competitive Industry, Chicago, 1958.)

(77) Robinson reaches (to 1958) the same conclusions for the U.K. and the United States. (Ibid., p. 30-31.)

If anything, the really big ones (1500 employees and over) have shown a secular (ten-year) decline.

The analysis does show that the smaller plants, of under 100 employees, are diminishing in relative importance. But the same trends are also evident in the over-500 group. The only sizes which have shown recent growth are in the middle ranges - 100 to 199 and 200 to 499 sizes. (78) Thus, conventional wisdom, embarased time and time again since Professor Galbraith's first scathing attack on facile economic assumptions, is again proved wrong. Although, it is often accepted that production units are getting larger and larger, this opinion runs counter to the facts as has been demonstrated here.

Both larger units and smaller units are undergoing long-run declines, (78a) and the numbers of middle-sized plants alone is growing.

Thus, if the changing size of plant were proffered as a valuable criterion on which to base an industrial relations, bargaining unit policy, it would clearly be unable to advocate the facilitation of larger units. This examination, of course, makes no claims for or against more multi-plant or even multi-employer bargaining units. That subject is discussed in other sections of this study.

(78) The graph reveals a clear, temporary tendency of more, longer and fewer, smaller plant sizes during the period of the Second World War. This was an exceptional behavior caused by the exigencies of the military production effort.

(78a) Another line of argument might be taken to analyze the empirical results of appendix IV. if within each range, the size mix has shifted, concentrating more firms against the upper limit, growth in the overall size mix will have occurred, but gone unnoticed here. Since the DBS breakdown is done on a "range" basis, this possibility (of "unnoticed growth") cannot be tested. We are left with the proportion of total employment accounted for by the ten ranges.

Cost Two: National Unity

Splitting bargaining units only on cultural grounds can adversely affect national unity in Canada. If a substantial proportion of existing system-wide units are broken up, it may mean that unity of labour organizations is lost. However, there are some very successful Canada-wide bargaining units in operation. To name only two: NABET/CBC and the IAW/AIR CANADA. Where the members are satisfied with the quality and quantity of services no splitting-up move will be initiated. Also, it can be expected that all national units will be more carefully serviced by incumbent agents now that a threat to their positions has been manifested. This will further diminish the "possibility of a national calamity".

Cost Three: Bargaining Power-Employees

There may result a lowering of bargaining power for the employees involved.⁽⁷⁹⁾ The previous discussion already dealt

(79) A corollary cost can be that of giving too much power to a group of workers by permitting them to bargain apart from a larger group. A labour relations board should be aware of the relative powers of the parties in an existing bargaining relationship and also to assess the power effects of fractionizing. While the present structure of the CLRB hardly permits this kind of assessment, the addition of a professional research department (see below) could provide such information. These are "effects" problems which the Board is rather ill-equipped to handle at present.

with this question and concluded that bargaining power does not necessarily increase with increases in the size of the unit; other important elements must be taken into consideration. (80)

It should be pointed out, however, that the above analysis is only based on a historical examination of statistical data of the labour force size of the Canadian establishment, as contained in Appendix IV. These statistics are not an adequate guide for reaching decisions about the forces of centralization and concentration operating in the Canadian economy. Other statistical measures of centralization, which are beyond the scope of this study, may have given results which could lead to conclusions opposite to those based on Appendix IV.

For instance, one could consider the possibility of some firms adding new plants, and expanding their output and share of the market; at the same time, however, their employment level may have remained the same or even gone down, primarily because of technological progress.

(80) This is not the occasion for a full investigation of this issue. For a discussion of the issue relating unit size and bargaining power, see H. Kasper, "The Size of the Bargaining Unit and the Locus of Union Power," Quarterly Review of Economics and Business, Spring, 1966, p. 62.

Cost Four: The Wage Structure

It is repeatedly stressed by opponents of fractionalizing that such a practice would increase geographic wage differentials.⁽⁸¹⁾ The ancillary argument is, of course, that differentials have, in fact, narrowed at all in the recent past or that, within certain national bargaining units, geographic differentials do not exist. Ostry says: "....relative (....geographic....) wages have shown no tendency toward greater uniformity in recent years." "Secondly, while unionism has made some impact on the geographic wage relationships in certain industries and in certain areas, on the whole the "wage ecology" of this country has been most strongly influenced by economic forces - operating, of course, in a specific demographic and institutional framework."⁽⁸²⁾ Where the fractionalizing frees a minority sub-group previously called upon to compromise its own interests such a split could conceivably

(81) "The break up of the existing coast-to-coast bargaining units would have obvious disastrous results. The employees' bargaining strength would be greatly reduced; chaos would result in the handling of disputes; bargaining units would be shattered; disunity would spread through many parts of the labour movement, and the hard-won pattern of Standard Wage rates and working conditions would be jeopardized." Canadian Labour, September 1967, p. 4 (Underlining added).

(82) Woods & Ostry, p. 483. Note, Dr. Ostry mentions "unionism" as having some impact, but she does not say it this is attributable to national units. Most likely the existence of any substantial union power, whether local or regional, has had most of this impact by simply pushing up wages in its respective specific geographical area. See also, S. Peichinis, The Economics of Labour, McGraw-Hill, 1965, pp. 316-322. In his factors bearing in the differential, Peitchinis does not even include the degree of unionization. He also finds no compression in the regional differentials between 1939 and 1962. The only "....exception is Quebec...." "This reflects Quebec's relatively rapid rate of industrialization during the past two decades." (p. 317)

be the source of increased bargaining power and an eventual narrowing of geographic wage differentials. Probably most national collective agreements have built-in differentials in any case. (These are sometimes
(83)
called "location differentials")

This does not imply that the regional unit or that regional unionism (or that the CNTU) is necessarily superior in terms of bargaining power to a system-wide arrangement. The contention here is that a split-off group may be in a better position to help itself than when its cohesiveness
(84)
is diluted in the national unit.

Cost Five: The Costs of Strikes

Fractionalizing may lead to increased industrial conflict. Four aspects of industrial conflict must be identified before proceeding further.

Increased strike activity has many measures; number of strikes, man-days lost, number of workers involved, economic losses to (a) the workers directly concerned, (b) workers indirectly involved, (c) the firm directly concerned, (d) firms indirectly affected, and the general public (deprived of goods and services). Using any of the terms above, there does not seem to be a necessary relationship between the impact of split, Quebec regional bargaining units and the magnitude and effects

(83) For example, in the IATSE/CBC agreement, for three classifications, employees at "Montreal and Toronto" only had base wages more than 10% higher than at "other locations". Source: (Collective Agreement). This built-in differential was eliminated, however, with the 1962-63 agreement.

(84) While many writers have dealt with this type of question on a craft basis, the author is not aware of any research done on the issue in geographic terms.

of changes in the "size" of industrial conflict. Even if there should be more strikes, they would, of necessity involve fewer employees in the regional unit than in the system-wide unit. Thus strikes by both (or the several) regional bargaining units would be the equivalent of one national strike. In the IATSE/SGCT/CBC and the ANG/SGCT/CBC cases, a strike by Quebec regional bargaining unit would leave the remainder of Canadian CBC broadcasting (the English network) essentially intact. (85)

Cost Six: To Employers

Managements of system-wide units would have to make serious adjustments in administrative practices if these units are split. They would be obliged to bargain with several units instead of a single one. This is one of the real costs, about which little more can be said here. (86)

There may be some offsetting advantages to the firm, however, of it feels it has gained in terms of bargaining power, or if it knows that a strike by one unit will still leave part of its operations functioning.

Cost Seven: Goods to the Public

Another cost, related in nature to the preceding one concerns the interruption of the flow of goods and services to the public. Given split bargaining units, given a strike, the consumer can still expect to have some access to the firm's commodity (where plants are not inter-dependent) since the latter will have strike-free production units in operation. This thus turns out to be a "non-cost", or benefit.

(85) Quebec province produces, in the main, French radio and television programs, while in the rest of Canada, the CBC produces English broadcasts. The English network continued largely unaffected during the 1959 TV strike of the French network employees.

(86) Some aspects of this cost are dealt with in the Conclusions, see p. 55.

Cost Eight: Determination Rigidity

There is also a real cost attached to the recommendation that the CLRB explicitly rank the criterion used in each case. The advantages of such a policy have already been touched on earlier in this chapter. (86a) Such a procedure may, however, inject a certain element of rigidity into the flexible, ad hoc method currently employed by the CLRB. The Board now explores only those criteria it deems relevant and appropriate to the case at hand. This permits a high degree of discretionary flexibility in the mechanics of seeking out the appropriate bargaining unit. If the criteria were explicitly laid down and if the Board were obliged to evaluate each in every case; it is obvious that some of the "play" it now enjoys - and which can lead to "acceptable compromise positions" - would disappear. Still, on the other hand, such an obligatory enumeration would probably result in fairer judgements since, in all cases, all the criterion would have to be evaluated. The Board would examine the case in the light of each criterion and set up the embryo of an implicit type of balance sheet. When the sum of the criteria which favour a certain judgement are finally set against the criteria lending weight to a rejection of the application, more objective and comprehensive test will have been applied.

The final judgement would also be comprehensive and more objective. The various applicants in a given case would be put on a more equal footing. The Board would no longer be able to examine only certain criteria in some cases and only other criteria in others. A standard set of criteria would be utilized and applied (tested) in all cases where rival delineations of an appropriate bargaining unit are being sought.

(86a) The "ranking" proposal is elaborated upon the Conclusions (see below).

Cost Nine: "Company Unions"

Another potential "cost" concerns one of the objectives of current legislation and indeed of the interests of effective and meaningful industrial relations. Article 2(1)(r) of the IRDIA states that a "trade union....means any organization of employees formed for the purpose of regulating relations between employers and employees but shall not include an employer-dominated organization" (underlining added). Public policy does not encourage "company unions." One fear, in the wake of a change in current Board policy, could be that the granting of regional units will enable firms so inclined, to organize company unions more easily. In view of the militancy and significant gains shown in recent years by all Quebec unions, this argument is easily discarded. A more sympathetic attitude toward fractionalizing is hardly likely to assist the formation of company unions since employees look to the unions, not to employers in efforts to ameliorate working conditions.

VI THE TWO APPROACHES

Pershaps it is now timely to consider two terms only touched on earlier. Recommendations as to the "appropriateness" of a regional bargaining unit can be evaluated in two ways:

1. The "Industrial Relations-in-a-vacuum" approach (to be called simply the "vacuum" approach).
2. The "environmental" approach.

The foregoing costs/benefits analysis has been largely a vacuum approach. Using the environmental approach injects a consideration of current streams of political, social and cultural forces into any problem under examination.

Much publicity has lately been given to the aspirations of French-⁽⁸⁷⁾ Canadians to assume greater autonomy over their affairs. The major aims of this concerted drive is to give to the Province of Quebec greater political and economic powers and controls. Leaving aside the highly explosive questions of the "appropriate" degree of political, constitutional and fiscal autonomy - these lie certainly beyond the scope of this study - we should see what implications flow from these structural changes in terms of the appropriateness or inappropriateness of regional bargaining units for Quebec workers (understood, always, where the latter ask for it).

(87) This, "maître-chez-nous" concept has been building up since 1960, although a concentration of discussion has occurred in the last two months of 1967; viz, (1) The "Robarts" Confederation Conference, Toronto, (2) The Estates General, Montreal, and (3) The Report of the "B&P" Commission, Ottawa (4) The Federal-Provincial constitutional conference, Ottawa (February, 1968). See also P.E. Trudeau, Le Fédéralisme et la Société Canadienne Française, les éditions HMH, Montreal 1967.

Mr. J.L. McDougall, Chief Executive Officer of the CLRB has
(88)
written.

"Unit determination on sound lines is without doubt one of the most important and constructive of the functions of a labour relations board. Certainly in the Canada Labour Relations Board we regard it as one of our most important duties. The approach must not only be sound but it must be flexible enough to accommodate the varried labour relations situations that are encountered. Legislation changes from time to time and so do political and economic climates and the members of labour relations boards, and one or all of these changes can give rise to new or revised interorelations as to what in "appropriate" at a particular time or in a particular economic situation".

It is not within the scope of this study to discuss the political changes and stresses which Canada is presently undergoing. Still, one can hardly fail to realize that Quebec's tenacious search for more explicit identity will lead to structural changes in its relationship with the federal government. What is difficult, indeed perhaps daring to assess is (1) The extent to which the new relationship will give Quebec accrued autonomy, (2) How long will it be before such changes take place, and (3) If changes will be lasting or merely short-run alterations, eventually returning to a situation similar to the existing one.

(88) The Practice of the Canada Labour Relations Board in Determining Bargaining Units of Employees, (mimeo.), speech to the Canadian Association of Administrators of Labour Legislation (CAALL), date (C.1965), p. 3 (Underlining added). This document is reproduced as appendix III, below.

It is probably a fair assumption that things political, insofar as Confederation is concerned, will undergo changes leaving Quebec with more political and fiscal autonomy. Given this, (only an assumption by the author) can the CLRB continue to ignore similar requests for greater autonomy for groups of Quebec workers seeking bargaining units over which they will have greater (complete) autonomy? A comprehensive, forward-looking reply must be negative. Industrial relations realities must also recognize political and social forces, especially in a situation like (89) the one concerning Quebec of the 1960's.

The Broader, "Autonomy" Forces.

While the discussion has, to here, been limited to the conflict between a national certificate held by a CLC union and a request to fractionalize from a CNTU union, the dimensions of the situation concerning Quebec workers go beyond this. Even within the CLC there are similar stresses for greater autonomy in Quebec. At the last CLC bi-annual convention in Winnipeg, 1966, the QFL delegates made it very clear that it wanted increased powers to determine their own policies, and increased independence generally.

Also, during the course of the QFL bi-annual convention (Montreal, November, 1967) there were definite forces seeking similar changes.

- (1) "Be it resolved that the QFL repatriate all the Canadian Labour Congress technical services in Quebec". (90)

(89) For an excellent review and assessment of the effects of "the Quiet Revolution in Quebec" (since 1960) on the labour movement in the Province, see, L.M. Tremblay, "L'évolution du syndicalisme dans la révolution tranquille", Relations Industrielles, January, 1967, p.p. 86-97.

(90) Resolutions, QFL Convention, p. 85

(2) "Be it resolved that the QFL request the CLC to transfer under QFL responsibility all services currently offered by the CLC in Quebec and that an adequate compensation be paid the QFL to enable it to continue giving the services presently given by the CLC".

(92)

During the course of an interview a vice-president of the QFL, M. Jean Guerin-Lajoie (Director, district 5, USWA) spoke in similar terms. He maintained that only augmented powers for the Quebec section of the CLC can keep the movement healthy and growing.

Although it is probably an exaggeration, we may, nevertheless, envisage the day when an application for fractionalizing a national bargaining unit will come from the Quebec division of a national union holding a national certificate. One would expect that such a conflict need never arise, at least as far as the formal application stage. Sufficient and effective machinery should exist within the trade union movement (especially within a single federation) to provide a satisfactory internal resolution of such problems. Greater autonomy can be allotted to sub-groups within a single unit, but, in the Quebec case, differences may be so substantial that two separate agreements would be necessary. This would mean, in fact, two different bargaining units.

(93)

(91) Ibidem.

(92) Summer, 1967.

(93) For some of the difficulties of accommodating divergent views see N. Chamberlain, The Labor Sector, McGraw Hill, 1965, p.p. 218-20.

Has the "community of interest"(an important criterion determining the "appropriateness" of a bargaining unit) ⁽⁹⁴⁾ among the French-Canadian workers and English-Canadian workers diminished in recent years? Or, to put it differently, has the community of interest among the French-Canadian workers increased?

The Board has two options if it wished to use the environmental approach:

- (1) If it fractionalizes, it segregates workers into Quebec and non-Quebec groups. This segregation, itself probably undesirable, but may be less undesirable than continued conflict.
- (2) If it continues to reject the fractionalizing principle ⁽⁹⁵⁾ it may provoke more serious concerted reaction on the part of French-Canadian, Quebec workers who wish to be separated. In recent applications for fractionalizing (in the IATSE/CUPE/CBC and ANG/SGCT/CBC cases) it was revealed that large proportions (262 out of 701 eligible votes - spoiled, "write-in" ballots - in the former and 45 out of 65 in the latter) of such workers wished to join the applicant union and form independent bargaining units.

The wishes of the employees concerned, a recognized criterion in the determination of the appropriate bargaining unit, should be given more weight in the types of cases dealt with here.

(94) See E.E. Herman, The Determination of the Appropriate Bargaining Unit, Canada Department of Labour, 1966, p. 12.

(95) Fractionalizing should not be done only on the basis that the Quebec workers want it. Other factors, mentioned earlier must also be present; e.g. sufficient administrative managerial autonomy, homogeneity of working conditions, etc.

Further discussion is necessary in analyzing the source of Board policy not to fractionalize on a regional basis.

"....found to be appropriate...." (96)

In the excerpt from the BLEF decision previously discussed there is a phrase, "....found to be appropriate...." This implies a time dimension and seems to say that once the Board has found a unit to be appropriate, it remains so. Surely economic, social and political conditions in the Canada of the 1960's have shown an amazing aptitude for change. Surely the weight given to the various criteria and indeed the criteria themselves must keep pace with these dynamic forces in our economy and in society generally. That which was appropriate in 1953 need not be so in 1968:

While most would agree that some weight must be given to the jurisprudence of stability and a degree of continuity are to be maintained, an overemphasis on the past - especially the legal past - can constrict desirable dynamic forces. (97) These forces will have to be reckoned with at a later date at which time, because of a lack of policy flexibility, irreparable damage will have been done.

Is it so inconceivable that a high degree of community of interest which once existed (when the original certificate was issued), can become diluted?

(96) This is a continuation of the analysis of the key BLEF case referred to previously.

(97) See A. Weber, "Stability and Change in the Structure of Collective Bargaining," in Challenges to Collective Bargaining, Prentice-Hall, N. J., 1967, esp. pp. 28-29.

How is the "community of interest" criterion itself determined? Judge A.B. Gold of the Quebec Labour Relations Board has explicitly (98) itemized the elements of this "community" principle.

They are:

- (1) Similarity of duties or functions.
- (2) Similarity of wages or methods of computing compensation.
- (3) Similarity of working conditions.
- (4) Similarity of skills and qualifications.
- (5) Interdependence or interchangeability of functions.
- (6) The interchange or transfer of employees from one category of employment to another.

But does this mean that even where all these obtain to a high degree and even for a single employer, that the employees so described must necessarily be combined in a single bargaining unit? Surely the desires of the employees must be weighed against a high degree of community of interest where the latter exists.

The "Convincing ground" criterion for fractionalizing.

The final principle of the key BLEF judgement concerns, "convincing ground", which must be presented to the Board if the latter is to grant a fractionalizing. It would appear from the foregoing analysis that a broader interpretation of this concept must be adopted in the fuller interests of long run stability, meaningful labour-management relationships, but above all, in the interest of a more authentic representative nature of the member-bargaining agent relationship.

(98) International Union of United Brewery Workers (local 239) and Coca-Cola Ltd., Montreal, P.Q., November 25, 1963; File No. 3932-2/R-520 (1962); p. 12.

VII RECOMMENDATIONS

1. The CLRB should give more importance to an "environmental" rather than a "vacuum" approach in situations of fractionalizing. The difference between these two approaches is minimal where a case has no strong social or political elements. (99) The example of Quebec workers, in their quickly evolving "revolution tranquille", reveals a wide difference.

Where the environmental approach deviates significantly from the vacuum approach, it does not encourage industrial peace nor promote a high degree of representativeness in the bargaining agent, to ignore these broader aspects inherent in a situation.

2. The CLRB should state explicitly, in each case of the determination of unit appropriateness, each of the criteria used and the weight in gives to them. (100) It would provide valuable guidance for future applicants and also make Board policy perfectly clear if each, Reasons for Judgement mentioned all the criteria used in determining the appropriate bargaining unit and discussed the weight attributed each. Thus, the Board should say, for example, that even through the employees want fractionalization, this criterion is, in the view of the Board, less important than, say the management argument (101)

(99) More precisely, this refers to periods of rapid social and political change, especially structural changes.

(100) See appendix III.

(101) To the fullest satisfaction of the board.

that a divided bargaining unit would render efficient administration impossible, and that serious negative efficiency effects would ensue. The current Reasons for Judgement do not contain this concept of the "trade off". Why, when a large group of employees (e.g. IATSE/SGCF/CBC) expresses its desire to withdraw from an existing bargaining unit, should not the Board, in rendering a negative decision (as it did), state that it realizes "freedom of association" is being "traded off" for another, criterion, say "...the history, extent and type of organization of employees in other plants of the same employer, or other employers in the (102) (103) industry".

There does not seem to be sufficient discussion, in the Reasons for Judgement, of why the Board decides to relegate one or another of the recognized criteria to an inferior position. Perhaps (104) the Board should rank the criteria.

3. One might conceivably recommend that the current legislation is an insufficient guide as to appropriateness. Without tying the Board down, the statute could provide (simply state) criteria which should be considered in cases where, as in our problem, relative appropriateness is being sought. Article 9 (1) of IRDIA states: Where a trade union makes an (105) application...the Board shall determine... (Underlining added).

(102) This later criterion is drawn from Appendix III, below.

(103) This statement does present a rather weak (poor) trade-off when put in that explicit form (i.e., workers' desires versus "history" or other peoples' arrangements).

(104) The costs of ranking have been dealt with earlier in this chapter.

(105) Aside from the considerations of (1) definition of an "employee", (2) craft appropriateness, and (3) the restraint on multi-employer bargaining units, the Board is largely free to determine the appropriateness of a unit asked for.

The Board would retain its present freedom and discretion, but it would be obliged to consider stipulated criteria and to evaluate each.

4. In examining the list of criteria which the CLRB has been using, it appears that too much emphasis is being placed on past or historical factors. (106) Of the eleven mentioned in appendix III, five criteria are "backward-looking". The present problem of the fractionalized bargaining unit for Quebec workers illustrates the need for a more progressive or "forward-looking" policy.

Research

If the Board, because of time constraints, has been unable to evaluate the effects of its determinations of bargaining units, perhaps a research department staffed by economists, sociologists or other professional social scientists would prove useful. (107) Rather than depending on past experience, bargaining units should be "appropriate" in the light of current dynamic forces and, where possible, anticipated economic, social and political shifts and changes. (107a)

(106) See appendix III.

(107) Perhaps one highly qualified and experienced staff research social scientist (industrial relations specialist) will even do.

(107a) E.E. Herman has expressed a similar opinion: "It seems that most Boards wait until events overtake them instead of anticipating the shape of things to come and, thereby, trying to change their policies before difficulties multiply. The blame for this lack of foresight, however, cannot be aimed entirely at the Boards. They are so busy with routine work that they have no time for anything else". Herman, op. cit., p. 47.

VIII CONCLUSIONS

Pershaps the major and most realistic cost of a CLRB pro-fractionalization policy is that it will exaggerate rigidities of the adjustment process of accommodating to technological and other economic change. This aspect has already to alluded to in the analyses of some of the Board decisions earlier in the chapter. Even the most cursory survey of the current literature on Labour Economics will show the preponderance of interest and preoccupation with question of facilitating adjustments to industrial change. At a time when labour, management and government agencies are making unprecedented efforts to alleviate the social hardship and attenuate the economic inefficiencies of worker displacement and redundancy and it hardly seems reasonable to advocate the introduction of a bargaining unit policy which could only serve to worsen this aspect of industrial life. The proliferation of bargaining units will enlarge the existing barriers to mobility (for transfers, retirement schemes and training and retraining programs). One must, however, concentrate on the specific issue at hand: system-wide versus regional units. It would appear that in this area of the country's industrial structure, specifically concerning nation-wide communications (eg. CBC, CN, Air Canada, etc.) a high degree of mobility should be ever-present as these corporations seek out more efficient and less costly ways to serve the public. In view of this rather obvious truth, it does seem extremely strange that the CLRB has not, at least as witnessed in the Reasons for Judgement, felt the need to quantify, even roughly, during certification hearings, this "rigidity effect". This implication of unit determination has, it would seem, not been judged sufficiently important for the Board to ascertain the number of transfers, promotions and other historical or potential "inter-unit" (given a split) mobility or exchanges.

It is highly likely the industrial changes awaiting Canadian industry in the decade to come, will put an even higher premium on occupational, industrial and geographic mobility. To the extent that a decentralizing policy (i.e., one admitting fractionalizing) acts as an impediment to these desirable forces of change, such a policy must be regarded as a real cost to be born by worker and management (and the public) alike.

Seniority provisions have always played a significant role in determining transfer, promotion, lay-off and training sequences. With the advent of rapid technological and other economic change in the past twenty years, this seniority criterion is emerging with enhanced power to determine job and employee movements. Job security is, in many cases, taking priority over wage demands in many key bargains. A multiplication of bargaining units can only render such accommodations more costly and painful. Immobilities can be expected to result from the severance of system-wide units.

Size of the bargaining unit and Trade Union Structure.

Looking at the small-unit, large-unit problem from the trade union structure point of view reveals another dimension. One significant "backlash" to the larger bargaining unit has been a series of internal (108) revolts against some the effects of this "bigness". In August 1967 the International Society of Skilled Trades was rejected by a NLRB regional examiner as bargaining agent for skilled tradesmen in the U.S. Auto Industry. The full significance of this event lies beneath the rejection itself. What is remarkable is that any new union could even attempt to fractionalize the U.A.W., one of North America's most progressive and enlightened labour organizations.

(108) 1) The Toronto Telegram, August 2, 1967.

A more recent and closer-to-home example has been the fractionalizing of local 561 (Montreal) of the IBEW into two fully independent units. The former unit was made up of some 1200 railroad electricians employed by CN and CPR. The split left two units, 700 CN and 500 CPR. "A spokesman for the union reported that union members of the CPR demanded the creation of a separate local to represent them because they claimed their problems were different and required separate representation."⁽¹⁰⁹⁾ Undoubtedly, the 500-member minority group had its power greatly diluted in the demands of the local as a whole.

Other parts of this study deal in detail with the trends, both in the United States and Canada, of bargaining unit size. They point to a tendency of more, larger units. What must be asked at this time is: Does this trend constitute the only option or the best trend, given the criteria of long-run industrial peace, democratization of the collective bargaining process (especially for the union at the local plant level) trade union structure, and the public interest?

In the United States the NLRB has the legal and historical power to deny a multiplication of "appropriate bargaining units." Our Canadian position is clearly different. As is well-known, augmented constitutional powers since the Declaration of American Independence in 1776 has clearly tended to move in the direction of the federal government. In Canada, the opposite trend is just as clear, with the provinces increasingly expanding their jurisdiction and rights.⁽¹¹⁰⁾

(109) 2) Montreal Star, February 1, 1963.

(110) J.A. Corry and J.E. Hodgetts, Democratic Government and Politics, University of Toronto, 1960, pp. 551-594, generally.

In addition, the Canada of the 1960's has experienced a heightened acceleration of this decentralization process, especially in the case of the Province of Quebec. That province has expressed the desire to assume a large degree of political, fiscal, and constitutional autonomy, leaving the central government with only a minimum of jurisdiction. (111)

Nowhere else in North America does there exist the cultural and language basis underlying so strong a demand for decentralization. Despite continued cries for "states' rights", the United States certainly does not exhibit such a division. As other chapters in this study have shown, the NLRB exercises jurisdictional authority far exceed that of our CLRB. In view of the recent Canadian political trends cited above, it hardly seems realistic to think of a parallel evolution in Canada. From a solely industrial relations "(vacuum)" approach, it would probably be beneficial to give the central board accrued jurisdictional powers in inter-provincial commerce. (112)

This would provide a rational instrument to aid the evolving "mobility" problems emanating from technological and other change. While such an increased centralization would thus be beneficial, it is just not practical to look for such a solution. The historical winds blow in the opposite direction. To merely operate in the present situation on

(111) One has only to refer to the "dialogues" between the Premier of Quebec and the Prime (and other) Ministers of Canada especially between 1966 and the present (see p. 45).

(112) See F.R. Scott, "Federal Jurisdiction over Labour Relations", Unions and the Future, McGill University, 1959, pp. 35-51), also Herman, op. cit., p. 48.

the "vacuum" approach is not advisable. Due recognition must be given to the (political) practicalities and realities of present-day forces and events.

If, in the long run, a meaningful national desire for increased centralization is exhibited, (113) then policy should be adjusted accordingly. Although a respectable amount of tradition is needed for any policy basis, a public policy which lacks sufficient flexibility to reflect the changes occurring in society itself can be a real source of conflict.

The overall conclusion of this chapter is that, while the fractionalization of system-wide units may involve costs to management, the public, and to the worker, (114) continued neglect of the expressed wishes of the Quebec members of system-wide units may involve long-run costs (the manifold results of discontent) which may outweigh the short-term advantages inherent in a policy of maintaining the existing structures. (115)

(113) This seems remote.

(114) Perhaps governments can alleviate some of the difficulties.

(115) It cannot be stressed too often that action to fractionalize can only be considered after the Quebec members have shown that they want a separate unit. The author does not envisage a flood of requests to fractionalize if the CLRB did modify its "no-split" policy.

APPENDIX I

THE "VIABLE" BARGAINING UNIT.

APPENDIX I

(116)

The Board has spoken of the "vialibility" of a bargaining unit. What are the determinants of vialibility? Or, to put it differently, when is a unit not viable? In simplest terms, a non-viable unit is one which will not survive. Some of the causes of "death" are:

- 1) absence of bargaining power,
- 2) absence of adequate financial resources,
- 3) unrelenting, fierce anti-union attacks by the employer.

Each of these factors can, in turn, be more deeply analyzed in efforts to determine causes of viability. Because of lack of space, the subject is not penetrated further here. Using the above measures, it is highly unlikely that any of the proposed fractionalized units would be non-viable.

(116) ANG/SGCT/CBC-N, see appendix II, case II, mimeo. p. 6.

APPENDIX II

LIST OF THE "CARVING OUT" CASES.

APPENDIX II

(117)

Following is a list of recent CLRB cases which involve a request to fractionalize national bargaining units and establish Quebec regional bargaining units. Also included below are other cases involving these same bargaining units, but where only a change in bargaining agent is applied for. These two sets of cases thus give the complete picture of union rivalry concerning the national versus regional bargaining

(118)

units.

(117) From 1965 to 1967.

(118) The cases all deal with national corporations.

Abbreviations:

(120)	CBC	Canadian Broadcasting Corporation (<u>Employer</u>).
IATSE		International Alliance of Theatrical, Stage Employees (CLC).
CTU		Canadian Television Union.
CUPE		Canadian Union of Public Employees (CLC).
SGCT		Le Syndicat Général du Cinéma et de la Télévision (CNTU). [(CLC)]
NABET		National Association of Broadcast Employees and Technicians
Angus Shops		Canadian Pacific Railway's maintenance Shops in Montreal (<u>Employer</u>).
SNEUCF		Le Syndicat National des Employés des Usines des Chemins de Fer, (CNTU) (Railroad Employees Union).
NHB		National Harbours Board (<u>Employer</u>).
PSAC		Public Service Alliance of Canada, (CLC).
SNFBPM		Le Syndicat National des Employés de Bureau du Port de Montréal, (CNTU). (NHB Employees Union).
CMHC		Central Mortgage and Housing Corporation (<u>Employer</u>).
SNESCHL		Syndicat National des Employés de S.C.H.L., (CNTU). (CMHC Employees Union).
ANG		American Newspaper Guild. (CLC).
ARTEC		Association of Radio and Television Employees of Canada (CLC).
UMWA		United Mine Workers of America.

(120) CBC-P involves production employees.
CBC-N involves news department employees.

LIST OF CASES

<u>Case</u>	<u>Date of Application, etc.</u>	<u>Date of Judgment etc.</u>	<u>Applicant etc.</u>	<u>Interveners</u>	<u>Results</u>
I	<u>C.B.C.-P.</u>				
(a)	3-6-65	6-12-65	CTU	IATSE, SGCT	CTU is not a "Trade Union".
(b)	11-9-65	14-1-66	SGCT	IATSE, CTU, NABET, SGCT	Refuses to split system-wide unit. Picard dissents: Minority report.
(c)	26-7-67	17-2-67	CUPE	IATSE, SGCT, ANG	Vote rejects CUPE's system-wide application. SGCT write-in vote in Montreal.
(d)	21-10-66	-	CUPE		Representation vote ordered between IATSE and CUPE. (See I(c) above.) [IATSE - 439
(e)	25-1-67	24-7-67	SGCT		CUPE - 818 Spoiled (SGCT) - 265]
(f)	11-10-67	Pending (Jan. '68)*			CLRB decision (not "judgement") not to fractionalize because of lack of "convincing grounds".
(g)	10-11-67	Pending**	CUPE		CLRB orders vote; re: revocation of IATSE's certificate at CBC-P.
II	<u>C.B.C.-N.</u>	7-7-67	SGCT	ANG, CUPE, ARTEC	Again applies for system-wide CBC-P unit.
III	<u>ANGUS SHOPS</u>	14-12-66	SNEUCF	11 international craft unions. PSAC	CLRB refuses split system-wide CBC-N bargaining unit.
IV	<u>NHB</u>	25-7-67	SNEBPM		CLRB refuses to split system-wide CPR maintenance (Angus Shops) bargaining unit.
V	<u>CMHC</u>	20-9-67	SNESCHL	UMWA, Dist. 50	CLRB grants application for Montreal part only of NHB office employees. Certificate formerly held by association of Montreal, only employees. No split.
VI	<u>FEDERAL HOSPITALS</u>	10-7-67	Public Service Staff Relations Board. (Not CLRB!)		CLRB certifies NESCHL for 6 of 8 CMHC apartments in Montreal region.
					Certifies PSAC for 6,500 federal hospitals employees. CNWU had intervened on behalf of Quebec employees.

* After this study was completed, the Board de-certified IATSE.

** The CLRB, early in 1968, granted CUPE the system-wide bargaining certificate for the unit previously represented by IATSE.

DATES: Day - month - year.

APPENDIX III

CLRS CRITERIA FOR THE "APPROPRIATE" UNIT.

The Practice of the Canada Labour Relations Board
in Determining Bargaining Units of Employees

In determining bargaining units the Canada Labour Relations Board, like any other labour relations Board, must give consideration to numerous factors and circumstances which will affect the determination as to whether a particular unit is or is not appropriate.

These unit-determining factors or circumstances which guide a Board are, to mention them briefly, as follows:

(1) The purposes and provisions of the legislation administered by the Board, particularly those which govern the establishment of appropriate units.

(2) The mutuality or community of interests of the employees or groups of employees in the proposed bargaining unit.

(3) The past bargaining history of the bargaining unit in question.

(4) The history, extent and type of employee-organization involved in the unit determination.

(5) The history, extent and type of organization of employees in other plants of the same employer, or other employers in the same industry.

(6) The skill, method of remuneration, work and working conditions of the employees involved in the unit determination.

(7) The desires of the employees as to the bargaining unit in which they are to be embraced.

(8) The eligibility of the employees for membership in the trade union or labour organization involved.

(121) Speech delivered by J.L. MacDougall, chief executive officer, CIRB, C.A.A.L.L., c. 1965.

(9) The relationship between the unit or units proposed and the employer's organization, management and operation. How the proposed unit fits into the company's organization, plant setup, etc.

(10) The existence of an association of separate employers exercising employer functions and having a history of collective bargaining on a multiple-employer basis.

(11) The bargaining performance of an existing bargaining agent with respect to employees in a unit previously determined as appropriate.

To a group of specialists in labour relations, such as are here today, I need not elaborate on the eleven factors or circumstances mentioned above. They are to a large extent self-explanatory, but I might say in connection with Item 11 that it covers those situations where a trade union and a employer either ignore or bargain out certain groups of employees in an appropriate unit when making a collective agreement. Such practices, of course, court the possibility that, on application by another bargaining agent, a Board might find such isolated employees an appropriate unit in these circumstances, whereas they would not be so found in any other.

While there are probably other factors in particular cases, the eleven set forth above would appear to cover nearly all the situations facing a labour relations Board in making unit determinations. Of course, in any one situation, not all factors would be present, or present to the same degree. They would run through many permutations and combinations, but generally a Board is guided to

its decision through the principal factor or factors. In some cases, a Board might give weight to a factor, which, present to a greater degree in another case, had been ignored. It is the combination of factors that often gives emphasis to the "determining" factor.

Generally speaking, with some labour relations Board a unit is appropriate and the determination is practically automatic if there is no objection to it by the parties concerned and it does not offend in a serious way the factors which I have set forth. Where one or more of the parties object or there appear to be serious flaws in the proposed unit which would involve a Board in contradictions of policy, then a Board must make the unit determination which, in its opinion, will give effect to the purpose or purposes implicit or explicit in the legislation it administers. If a Board finds a proposed unit to be inappropriate for collective bargaining, it will do so by measuring it against the objective standards we have been discussing.

In its labour relations connotation, an "appropriate" unit is one that in collective bargaining will best serve the interests of the employees and the enterprise in which they are employed, and will promote stability in labour relations. Obviously, an unwise unit determination that resulted in labour relations frictions between an employer and a trade union or between two or more trade unions --- and which might put the employer out of business or the employees out of work --- would not make for stability in labour relations.

Unit determination on sound lines is without doubt one of the most important and constructive of the functions of a labour relations Board. Certainly in the Canada Labour Relations Board we

regard it as one of our most important duties. The approach must not only be sound but it must be flexible enough to accommodate the varied labour relations situations that are encountered. Legislation changes from time to time and so do political and economic climates and the members of labour relations Boards, and one or all of these changes can give rise to new or revised interpretations as to what is "appropriate" at a particular time or in a particular economic situation. I need merely mention here the various streams of interpretation that have issued from the United States National Labour Relations Board since the early days of the Wagner Act, as to what is or is not an appropriate unit. At different periods in similar cases that Board has given differing emphases to unit-determining factors.

The extent to which a Board has discretion in the establishment of units --- either as a craft unit, multiple-craft unit, technical unit, departmental unit, industrial or plant unit, multiple-plant unit, employer unit, or multiple-employer unit --- depends upon the provisions of the legislation administered. The Federal Act, for instance, defines a unit appropriate for collective bargaining as meaning an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether or not the employees are employed by one or more employers. If it stood alone this would indicate a very wide discretion vested in the Federal Board, except in relation to units of employees of more than one employer. Section 9(3) of the Act provides that the Board shall not certify a trade union as the bargaining agent for multiple-employer units of employees unless all employers of the employees involved give consent to being joined in the proceedings and, of course, that consent involves being joined in the unit. This provision, as you will see, rather effectively limits the discretion of the

Board with respect to the determination of multiple-employer units as appropriate for collective bargaining if any one of the employers is opposed. The Board must also be satisfied that for each of the employers - not the employers as a whole - a majority of the employees affected are members in good standing of the trade union, or alternatively, have, by vote, selected the trade union as their bargaining agent.

I should also point out that the fairly substantial multiple-employer bargaining that has developed in the operations within Federal jurisdiction has not occurred through the certification process, e.g., railways, water transportation on the Great Lakes.

There is probably a good deal of room for discussion in this connection with respect to the provision of Federal and provincial labour relations legislation as affecting industry-wide bargaining, particularly in the absence of an inter-state commerce rule such as exists in the United States.

Section 8 of our Federal Act also strongly limits the discretion of the Canada Labour Relations Board, protecting as it does the right of craft and technical employees to be deemed separately appropriate units for collective bargaining. Here also is an opportunity for discussion on the merits of such provisions and I might note in this connection the decision of the U.S. National Labour Relations Board in refusing recently to break up existing industrial units in the automobile industry by the determination or setting up of a number of craft units as separately appropriate.

Section 61(f) of the Federal Act provides that the Board shall decide any question arising as to whether or not a group of employees is a unit appropriate for collective bargaining and the Board's decision is stated to be final and conclusive for all purposes of the Act.

In determining industrial or plant units, the problem often arises as to the inclusion in the appropriate unit of small groups or classifications on the fringe of the unit. It is the policy of the Federal Board to make such units as inclusive as possible in order to avoid isolating the fringe employees and possibly having them become the subject of another application for certification by another bargaining agent. This, of course, might well require the Board either to certify an inappropriate unit or to deny the employees involved the right to bargain collectively.

The Federal Board, in view of the interprovincial, national and international nature of the operations within its jurisdiction affecting transportation and communications, naturally has placed emphasis on the determination of units that are systemic in scope. In its early days the Wartime Board, in determining units of railway operating employees, found eastern and western regional units to be separately appropriate, in view of the existence of separate agreements in such regions and a history of separate bargaining on that basis. However, for the past ten years, the present Board has determined units of such employees to be appropriate over the whole system of a railway, regardless of regional divisions. From the viewpoint of effective collective bargaining and the orderly operation of the railways, the system units are deemed appropriate and desirable.

As for units of non-operating railway employees, more than 25% of all the employees that come within Federal jurisdiction. Our Board has, in effect, found them to be appropriate on a system basis by permitting the existing bargaining trade union, and no other, to add small certified units of employees. The Board's key decision in this case was the Toronto ticket sellers' case, where the applicant, the Canadian Brotherhood of Railway Employees, was refused certification for a unit of Toronto ticket sellers of the CPR for the reason that the majority of that class of employees and clerks generally on the CPR had already been organized by the Brotherhood of Railway and Steamship Clerks. This decision implicitly, and subsequent decisions explicitly, recognized the paramountcy of the CBRE with respect to the organization of CNR employees in similar classes, inasmuch as that Organization had been the recognized bargaining agent for many years.

In certain trucking cases, when the employer's operations had expanded interprovincially and there had been a prior history of certification of appropriate provincial units by provincial Boards, the Federal Board has recognized these facts of life and has determined as appropriate remnants of system-wide units, which it would not ordinarily have done if the field had been clear.

In the foregoing remarks I have been referring to the appropriateness or inappropriateness of a unit from the point of view, particularly, of the scope of the unit. There are other units that may be found appropriate or inappropriate on the basis of content or composition of the unit, e.g., as comprising foremen or supervisors, or security guards.

APPENDIX IV

THE CHANGING SIZE MIX OF CANADIAN MANUFACTURING
ESTABLISHMENTS.

APPENDIX IV (1)

SIZE OF MANUFACTURING ESTABLISHMENTS

- based on numbers of employees

<u>Employee Group</u> *	<u>YEAR</u>						
	<u>1929</u>	<u>1939</u>	<u>1944</u>	<u>1949</u>	<u>1954</u>	<u>1961</u>	<u>1964</u>
Under 5	4.4% **	4.3%	2.4%	3.0%	2.9%	2.2%	1.2%
5-20, 5-14	9.0	10.4	4.8	6.4	6.3	6.1	4.9
21-50, 15-49	11.8	11.4	10.2	13.6	13.1	13.8	12.1
51-100, 50-99	13.0	12.4	9.3	11.3	11.1	12.5	11.9
101-200, 100-199	15.0	14.7	10.3	13.3	12.3	13.7	14.2
201-500, 200-499	19.6	21.2	16.1	18.2	17.5	19.3	19.6
501 (500) and over	27.2	25.6	46.9	33.4	35.6	31.9	31.4
500-999	-	-	-	-	13.3	12.6	12.8
1,000-1,499	-	-	-	-	6.3	5.6	5.2
1,500 and over	-	-	-	-	16.0	12.9	13.4

Sources: Data from 1929 to 1961: The Manufacturing Industries of Canada, DES, pub. September 1965, pp. 114, 115.

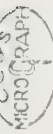
Data for 1964: calculated by author from raw data, Preliminary Bulletin, Manufacturing Industries, 1964, pub. January 1968, (6509-510).

* Where there are two ranges, first refers to years 1929, 1939 when slightly different sizes were used.

** This is the percentage of this range group of total employment (manufacturing) in that year.

Percentage of
Total Employment

10 X 10 TO THE 1/2 INCH
MADE IN CANADA



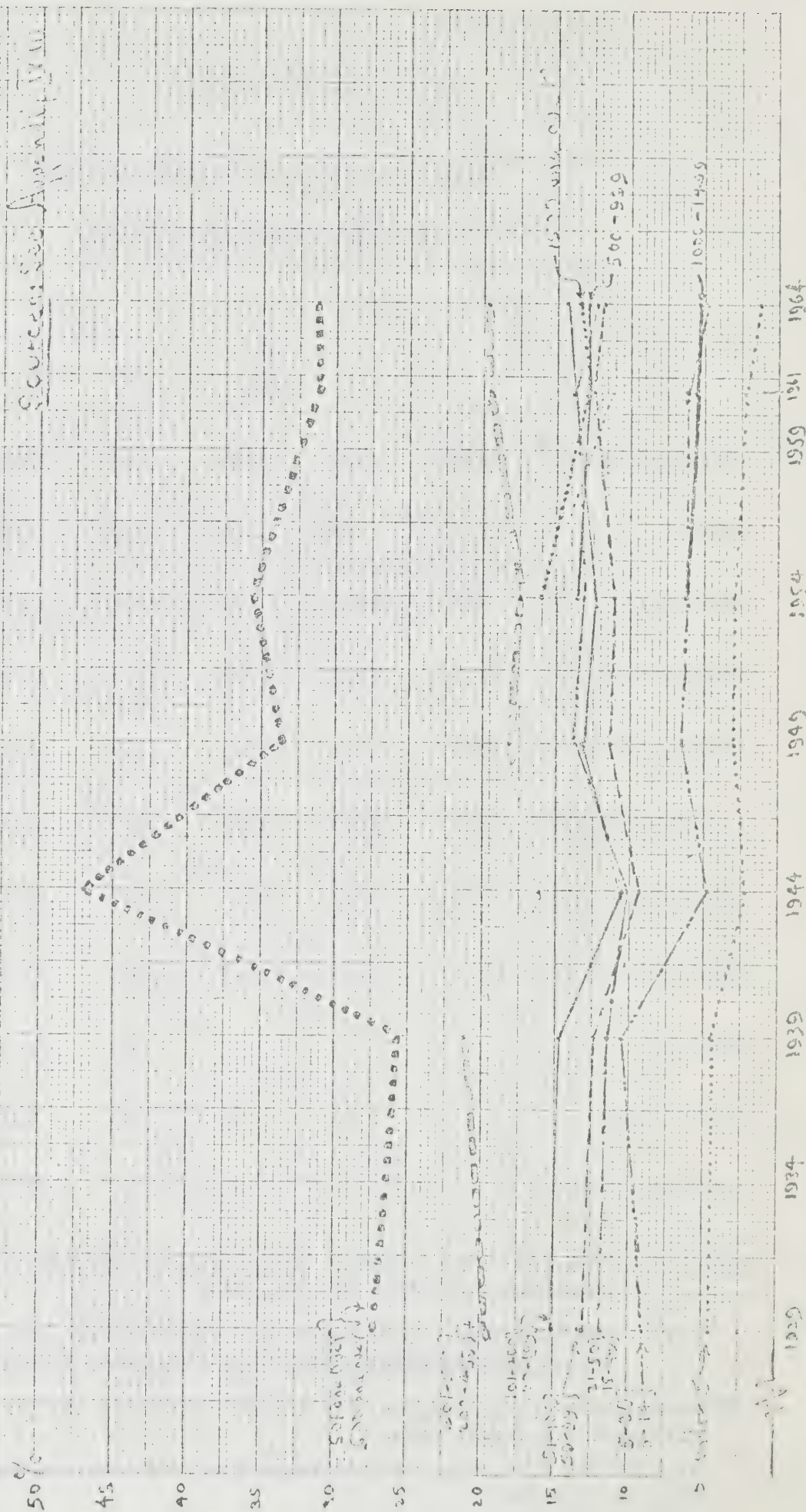
APPENDIX IV (2)

SIZE OF MANUFACTURING ESTABLISHMENTS

Based on the number

of establishments

Source: See Appendix III



Year

CHAPTER XI

SUMMARY AND CONCLUSIONS

The bargaining unit exists in a very dynamic environment which exerts strong pressures for change in the character of the unit. These pressures emanate from such sources as technological change, changes in administrative, product, and market structures, of companies and industries, changes in internal policies and structures of unions, and a changing industrial relations role of the government. In view of these developments, the role of the labour relations boards in the determination of appropriate bargaining units and the criteria applied by them to this end have to be re-evaluated. The legislative structure also has to be re-examined. The summary and conclusions of this evaluation are presented below.

The first chapter provided an introduction to the subjects covered in this work.

Chapter II summarized bargaining units as to type, scope, and the number of unions comprising the unit. The chapter states that bargaining units may be determined by certification or by mutual agreement between unions and employers. Since presently voluntary bargaining units, established exclusively by mutual consent of the private parties, are relatively rare, an examination of the collective bargaining structure has to include the third party, namely, the public operating through the labour relations board. This implies that, in effect, three parties

are engaged in the determination of bargaining units: unions, employers, and the government. Although unions and employers -- by mutual agreement -- have the discretionary powers to expand certified bargaining units into larger structures, the actual bargaining unit emerging is most likely different than the one which would have been established without the certification process.

Industrial relations decisions affecting any one worker are not necessarily reached in one bargaining unit. In some firms or industries negotiations take place at a number of levels, where at each level different issues are being resolved. Thus, the worker is, in effect, a member of a number of bargaining units. Furthermore, in some situations, the worker's employment terms may be decided upon in informal bargaining units which may not necessarily correspond to the formal bargaining units. At times, the center of decision-making authority for either management or unions, or both, may be outside the formal bargaining unit. If this takes place, the collective bargaining process within the bargaining unit is weakened considerably.

Finally, the decisions of a labour relations board as to the appropriateness of a bargaining unit can make a difference between a union gaining the right of collective bargaining for a particular group of employees or losing it. The board's judgement in this area also may affect the outcome of a representation contest among competing unions.

The impact of board decisions does not stop with the granting of certification, it can also affect union security following a certification.

In view of these implications, it is clear that the board's actions are of vital significance to unions, particularly craft unions, to employees or specific groups of employees, and to employers. Needless to say, board decisions also have significant implications for the economy.

One of the major topics of Chapter III was the evaluation of objectives of public policy in industrial relations. The different objectives examined were: laissez-faire, maximum freedom of choice, stability of collective bargaining relationships, minimization of disturbance of existing institutions, maximization of national economic performance, and protection of the public interest. In a pluralistic society, the above objectives may be followed concurrently. Although criteria could be incorporated in legislation to realize these objectives, administrators of the legislation would still require broad discretionary powers in the exercise of their duties. To a significant extent, they would still have to make value judgements in reaching their decisions. Too much weight given to one objective could easily lead to conflict with another. For instance, stressing freedom of choice could lead to many small bargaining units. This, in turn, could contribute to industrial strife and also could disturb stability of collective bargaining relationships.

In this chapter, an "appropriate" bargaining unit has been defined as one that best accomplishes chosen public economic and social objectives. The nature of society in both Canada and the United States suggests that the most effective goals of public policy should be to determine bargaining units which would reflect as much as possible the desires of the private parties without significantly disregarding national objectives.

The key term for board certification practices in determining appropriateness of bargaining units is flexibility. In view of the dynamic nature of the economy, no set rules can be established for determination of appropriateness. The unit which was appropriate a year ago may be inappropriate today. Thus, the boards, in discharging their duties, must be willing to review on a continuous basis the application of criteria for the determination of appropriate bargaining units.

In conclusion, it is suggested that the desired social and economic objectives can be furthered by permitting the parties a considerable degree of freedom to experiment with actual bargaining units that may at times depart from the certified units.

In Chapter IV, it is indicated that divided jurisdiction among eleven boards and compulsory conciliation is a deterrent to the natural evolution of bargaining units.

It is concluded that provisions for compulsory conciliation coupled with provincial jurisdiction create another impediment to the rationalization of Canada's bargaining structure. Such arrangements hamper the formation of actual, inter-provincial, multi-plant, and multi-employer bargaining units, and may also interfere with the development of various types of informal relationships on an inter-provincial basis, relationships which result in informal bargaining units which extend across provincial boundaries. Compulsory conciliation provisions should either be removed or, at a minimum, legislative arrangements should be made for conciliation on an inter-provincial basis. The following statement by Woods expresses very well the compulsory conciliation conclusions contained in this chapter.

If compulsory conciliation were dropped from Canadian policy, even with provincial certification the parties would be free to merge bargaining units and to negotiate, engage in work stoppage, and sign agreements without too much concern for the demands of the law. If we insist, however, on provincial jurisdiction and retain the present system of compulsory conciliation with its suspension of the work stoppage, part of the natural evolution of collective bargaining institutions will be prevented, and much ingenuity will be displayed in attempts to evade the law.¹

The chapter is critical of the absence in Canada of a centralized labour relations board with authority over companies with interprovincial industrial relations interests. It is suggested that the creation of such a board would be a move towards the elimination of industrial relations conflict revolving around the issue of

interprovincial bargaining units. Also, such a board would be more in step with the dynamic pressures existing in the economic and industrial relations environment. Some of these pressures are: changing technology, better transportation networks expanding the area of competition, interdependence of local markets through wage uniformity pressures, company-wide contracts for firms operating in heterogeneous markets, and better coordination of bargaining by unions and employers.

It is pointed out, however, that centralization of labour relations in one national board has its drawbacks, and that there are some benefits in decentralization. For instance, under provincial jurisdiction, cases can be processed faster, the boards are more aware of the circumstances surrounding each case; there can be more initiative for experimentation, and finally, decentralization implies local authority, and this draws us nearer to the "ideal of self-determination"² than we would have through the formation of one board.

Although the arguments for provincial industrial relations autonomy have some merits for smaller local firms, they would not necessarily be applicable to larger firms with interprovincial industrial relations interests. Heterogeneous jurisdiction may complicate and confuse collective bargaining in such firms. Decentralization of industrial relations may also have economic consequences; it may encourage location of industry on the basis of favourable labour legislation, rather than on economic grounds. It is also indicated in Chapter IV

that, at times, provincial autonomy in labour relations could be conducive to "lawlessness."³ To conclude, decentralization can probably be viewed as a roadblock to the movement of the dynamic forces in the economy. It is suggested that industrial relations in Canada be centralized in one national labour relations board for firms with inter-provincial industrial relations interests. This, however, brings up the question of the means to be used towards the achievement of this objective. A number of alternatives are contemplated.

One possibility suggested was to bring industrial relations disputes under Section 91 of the BNA Act. Section 91 embraces areas under the exclusive powers of the Parliament of Canada.

Another alternative considered would be for the Parliament to designate some of the industries "...to be for the general advantage of Canada or two or more provinces."⁴ This would locate such industries under federal jurisdiction. The shortcomings of this solution is the placing of a total industry embracing both large and small firms under a national board. Another drawback to this course of action is that a declaration by Parliament takes over much more than industrial relations.

Still another choice considered was to locate industrial relations under concurrent powers. This would permit both the federal and provincial legislatures to assume responsibility; however, the federal law under such a system would be supreme. There are a number of

disadvantages to the concurrent power approach which are discussed in some detail in the body of Chapter IV.

Centralization and expansion of national authority in the field of industrial relations could also take place through another method. The common law provinces could assign to the Parliament of Canada authority in the area of industrial relations. This could be accomplished under Section 94 of the BNA Act. Since Quebec does not have the constitutional authority or the desire to give up any of its labour relations responsibilities, and the other large Canadian provinces share Quebec's sentiment on this subject, this solution is not very meaningful.

Finally, the court system is still another avenue of action towards centralization of industrial relations. To utilize this approach, one of the following procedures would be necessary: (a) a lawsuit challenging provincial jurisdiction; (b) federal legislation, or (c) "a constitutional reference framed to elicit opinions about federal authority over labour relations in interprovincial industries."⁵

The major obstacles to the implementation of any of the suggested approaches are not the legal barriers (which, nevertheless, are significant), but the difficulties in obtaining consent of the provinces for any of the above proposals.

It is suggested that the provinces would support only the concept of centralization and the formation of a national board (if they were invited) to participate actively in the creation and operation of such a board. Also, an extensive public relations and educational campaign would be necessary to acquaint the public and provincial officials with the advantages of centralization for Canada and the provincial jurisdictions.

The blueprint for the formation of a national board, particularly with regard to division of responsibility between federal and provincial authorities, the proposed functions of such a tribunal and its structure are all covered in the body of Chapter IV.

To conclude, the dynamic pressures in the industrial relations environment, outlined in this volume, make a strong case for centralization of industrial relations under the auspices of a national board.

In Chapters V, VI and VII, the effect on the emerging structure of collective bargaining of certain aspects of industrial relations have been examined. In general, the analysis indicates a trend toward larger bargaining units -- either formal or informal -- and increasing centralization of decision-making in industrial relations among both unions and managements. Intra-firm work jurisdiction disputes arise mainly from the existence of fragmented bargaining structures and would be reduced by replacing them with plant-wide and company-wide bargaining units. A

possible long-run solution to the problem of subcontracting disputes would be the establishment of comprehensive, process-wide bargaining units which would cut across company and even industry lines. Larger bargaining units are also promoted by increasing cooperation among various national unions and their affiliates, and among employers. Finally, the enlargement of bargaining units and increasing centralization of decision-making are being given impetus by certain characteristics of the contemporary collective bargaining process. There are, to be sure, certain elements in modern industrial relations which tend to counter these trends, such as the internal union problems which may be intensified by them. The analysis indicates that on balance, however, the forces promoting larger bargaining units and increasing centralization in collective bargaining probably outweigh those promoting opposite trends.

These trends in the structure of collective bargaining, to a large extent, stem from the attempts of the private parties, unions and managements, to adjust to a changing economic and technological environment and to either initiate or respond to changes in the realm of industrial relations. Thus, technological innovations cause changes in patterns of subcontracting which promote strife; changes in the structure of bargaining may be the means by which this strife may be reduced. The growth of large, diversified corporations through mergers and acquisitions increase the number of unions dealing with the corporate

center and tends to reduce the relative bargaining power of each; the unions respond by creating alliances and cooperating in their bargaining efforts. Unions increase their bargaining power by using whip-sawing tactics and selective strikes; employers respond by forming alliances of their own and assisting the victims of selective strikes. The growing complexity of collective bargaining issues puts many of them beyond the ability of part-time local union officials to deal with them effectively; as a result, a large part of the bargaining function is shifted from the local to national headquarters. All of these developments, and others examined in these chapters, are a part of the dynamics of collective bargaining. Furthermore, all of them are related to the structure of bargaining.

The "bargaining structure" has been considered in its broad sense, as including various types of informal as well as formal relationships. Thus, many of the structural changes examined involve the creation of larger informal bargaining units even though the structure of formal units, certified or actual, remained unchanged. From this it follows that, while certification decisions of Labour Relations Boards can affect the structure of bargaining, the Boards do not exercise complete control over the emerging structure of bargaining. Certified bargaining units may constitute the basic "building blocks" out of which the structure of bargaining is built. But there remains much leeway for unions and employers to alter the structure by agreeing to establish

actual bargaining units which are larger than those certified and by creating informal bargaining units which are larger or smaller than either the certified or actual units.

Lack of complete control over the development of the structure of bargaining and the leeway for unions and management to modify the bargaining structure does not, however, relieve legislatures and labour relations boards of the responsibility for developing certification policies and practices which will encourage the development of a structure of bargaining units appropriate for the contemporary environment. It is concluded that to provide such encouragement, Canadian policies and practices must be modified. In many cases today, the most appropriate bargaining unit would be multi-plant or multi-employer in scope. Yet, by and large Canadian Labour Relations Boards have been reluctant to certify such units. This bias against such units should be removed. We agree with Woods and Ostry that "...it might be helpful to redraft the legislation to eliminate the bias toward plant or single-employer units, and emphasize the importance of the judgement of the interested parties and members of the boards."⁶

Furthermore, in those industries under provincial jurisdiction, it is not possible to obtain certification of a multi-plant, multi-employer, or multi-union bargaining unit which extends across provincial boundaries. In this respect, the U. S. system, under which the NLRB has jurisdiction over most industries and can certify inter-state or even

nation-wide bargaining units, is highly preferable to the Canadian system. It is recognized, however, that constitutional provisions would make it extremely difficult for Canada to adopt the U. S. type of jurisdictional arrangements.

In summary, the analysis contained in this chapter indicates that Canadian legislation and the policies and practices of Canadian Labour Relations Boards regarding bargaining unit certification, result in inadequate flexibility in allowing the structure of bargaining to adjust to a changing environment. The entire system contains too much built-in rigidity and hampers excessively the efforts of unions and managements to create a bargaining structure appropriate to meet their needs. Experimentation of the parties should be encouraged, not hindered, by public policy. Once again, we agree with the statements of Woods and Ostry:

In general terms, the problem concerning the bargaining unit in Canada is its rigidity, which prevents natural change and evolution. In some situations, the bargaining unit ought to be smaller than is now permissible under our legislation as interpreted by labour-relations boards. More often, however, the need is for larger bargaining units. A number of trends in the economy point to this need.⁷

Perhaps what is needed in Canada is greater trust in the ability of unions and managements to create a viable structure of bargaining units and to make appropriate adjustments in that structure as required in a dynamic economy.

In the first section of Chapter VIII, the implications of multi-employer bargaining for the bargaining parties were examined. One of the more important effects of this type of structure can be a shift in the balance of bargaining power in favour of the employers where numerous small firms face a relatively strong union if its units are weak relative to individual employers. Furthermore, it may help one party in bargaining by enhancing its ability to deal directly with the higher-echelon officials who may make key decisions on the other side.

Yet despite the change in the balance of bargaining power, both sides often agree to multi-employer bargaining, because the party losing power may derive offsetting benefits from this type of bargaining structure. There are a number of potential benefits which may be derived from multi-employer bargaining, many of them advantageous to both parties. One of the more important is the reduction of competitive pressures among workers and employers in labour and product markets through standardization of wages and other terms of employment. This is an objective of unions and of many employers. Empirical evidence indicates that multi-employer bargaining is most prevalent in those industries where such pressures are greatest; it is less prevalent in oligopolistic industries, in which competition is less intense.

A number of unilateral or bilateral benefits from multi-employer bargaining may be classified as "convenience factors." In

some cases a multi-employer bargaining unit facilitates enlisting the unions and in labour recruitment. Training programs not feasible if undertaken by individual small firms may become feasible when conducted by an employer association as an adjunct to its bargaining activities. Multi-employer bargaining can reduce the amount of work involved in negotiating agreements, enable more skilled, "professionalized" bargaining, and facilitate administration of the union-management agreement. A multi-employer bargaining unit can reduce the danger of membership raids by rival unions, which can be beneficial to employers as well as to the incumbent union. Finally, a multi-employer bargaining unit can make possible certain fringe benefits which might be economically unfeasible on a single-employer basis.

There are, however, a number of potential difficulties for the bargaining parties which may arise from multi-employer bargaining. Differing circumstances among affiliated employers pose the most serious problem for a multi-employer bargaining unit. A single agreement may not be equally suitable for all firms or worker groups within the unit. Where circumstances are sufficiently diverse, there may be insufficient cohesion among employers or labour groups to allow the formation and continuance of a multi-employer unit, and such a bargaining structure may, therefore, be inappropriate. A prerequisite for multi-employer bargaining, then, is an adequate degree of homogeneity among affiliated employers and labour units.

It is sometimes argued that multi-employer bargaining is undesirable for employers because it restricts their freedom of action, that is, it requires some surrendering of "sovereignty" in industrial relations. While this is technically correct, in some cases, freedom of action is more apparent than real, and in practice, multi-employer bargaining may increase the employers' control over industrial relations decisions. This might be true, for example, where multi-employer bargaining would correct an imbalance of bargaining power in favour of the unions. Where individual employers have enough bargaining power to make freedom of action meaningful, on the other hand, they may resist multi-employer bargaining. Finally, there are several problems in establishing a multi-employer unit which may prove formidable enough to preclude this type of bargaining structure.

There is evidence that where the circumstances are appropriate, multi-employer bargaining has been a success. The long history of stability in many voluntary multi-employer bargaining units would point to this conclusion. Additional support is found in expressions of satisfaction from the bargaining parties in many multi-employer units and the observations of students of industrial relations.

Regarding its impact on the economy, multi-employer bargaining may have desirable or undesirable consequences or a combination of both. It is difficult to make blanket, a priori generalization in this

matter. Indeed, the economic impact of multi-employer bargaining may vary from case to case.

The major potential adverse effects of multi-employer bargaining are: (1) broadening the scope of work stoppages, and (2) reducing competition and promoting monopoly. Both might lead to increased government intervention in industrial relations to protect the public interest with a corresponding decrease in the latitude for private decision-making. Except among advocates of a planned economy, such a development would generally be viewed with disfavour.

Regarding the economic impact of multi-employer bargaining, the defenders of multi-employer bargaining make a number of points. Some are in rebuttal to the claims of adverse effects previously noted, while others concern positive advantages which may arise from this type of bargaining structure. It is pointed out that while multi-employer bargaining may broaden the scope of work stoppages, it may also reduce their incidence. Regarding the monopoly charge, it is argued that this charge is exaggerated, in that uniform labour standards do not necessarily result in uniform production costs and elimination of price competition. Rather, competition in product markets is concentrated in areas other than labour standards. Furthermore, the existence of substitute products serves as an additional check on monopolistic exploitation of consumers in many product markets. On the more positive side,

there is demonstrated the possibility that cooperation among employers, and between employers and unions -- which may be promoted by multi-employer bargaining -- can at times increase social productivity. Finally, it is argued that the available empirical studies of multi-employer bargaining do not support the dire conclusions drawn by its critics on the basis of deductive reasoning.

The objective of public policy toward multi-employer bargaining should be to preserve the advantages of multi-employer bargaining for the bargaining parties and the economy while protecting the public against its potential costs. What is needed above all is flexibility in both the statutory framework and decision-making by administrative agencies. Legislation banning multi-employer bargaining units is to be avoided, as is a general bias for or against the certification of such units, either through statutory provisions or the policies of labour relations boards. Public policy should encourage experimentation by the private parties in the establishment of bargaining structures best suited for their needs, and this freedom to experiment should extend to multi-employer units. Only if it is likely that a multi-employer bargaining unit will adversely affect the public interest, and the adverse effects are judged to outweigh the potential benefits to the bargaining parties, should certification of such units be denied. Moreover, if a multi-employer bargaining unit is likely to adversely affect the public interest, it is worth asking whether the undesirable effects can be

controlled by policy measures other than maintaining a fragmented bargaining structure.

The Canadian public policy regarding the certification of multi-employer bargaining units is in need of extensive revision. While there is some variation in legislation and labour board practices among the provinces, there is in general too little flexibility and too much of a predisposition to deny certification of multi-employer bargaining units. Legislation should be revamped to clearly vest in the boards broad discretionary powers. Furthermore, the boards should effectively utilize these powers, judging petitions for multi-employer certifications on a case-by-case basis and abandoning their present general bias against this type of bargaining structure. Finally, there should be adequate machinery for modifying the bargaining unit after it has been certified, such as the decertification election procedure provided in U. S. Federal Law. Inability to modify the bargaining unit once it has been certified has been an important reason why many Canadian Labour Relations Boards have been reluctant to certify multi-employer bargaining units in the first place. Regarding the certification of multi-employer bargaining units, it is concluded that Canada would do well to examine carefully U. S. policies and practices, which, in general, come closer to meeting the policy criteria advocated previously.

Chapter IX considered the various aspects of craft bargaining units. The points of view of the public, the industrial and craft unions, and the employer, with respect to craft bargaining units, were evaluated. A complete section was devoted to legislation governing craft certification and to the determination of the appropriateness of craft bargaining units by labour relations boards and their willingness to carve out craft units out of industrial units. In another section options and craft certification criteria available to labour relations boards were examined.

The connection between craft certification, industrial conflict, and supply of skilled labour was examined in still another part of this chapter. Finally, a new approach towards the craft issue in the form of multi-craft bargaining units was also evaluated.

The major contribution of this chapter is the analysis of the last two topics: the relationship between craft certification, industrial conflicts, and supply of labour, and the concept of multi-craft bargaining units. In view of this, the subsequent discussion of Chapter IX will be focused on these two subjects.

On the basis of available data, it is concluded that Canadian Labour Relations Boards pursue anti-craft certification practices. The reasons for this are probably legislative provisions and the assumption that proliferation of craft units would serve as a catalyst to industrial

conflict. It is suggested that the evidence available as to the relationship between the number of craft units and the degree of industrial conflict is not sufficient to support the above assumption. In some instances, the emergence of craft units could contribute to industrial conflict in the short run; in other cases the submergence of crafts within other units and the unwillingness of boards to grant them an autonomous status could also lead to industrial strife. In view of this, any generalization in this area would be inappropriate.

. Board anti-craft certification attitudes raise the question as to the effects of their practices on the supply of skilled labour. Before an answer can even be attempted the following topics related to the supply of labour issue have to be briefly discussed: (a) the trends of wage and non-wage differentials between skilled and non-skilled employees; (b) reasons for the trends; (c) whether there is a skill scarcity problem, and (d) whether the declining wage differential is responsible for the scarcity of skilled people.

Research findings indicate that the wage and non-wage differential between skilled and unskilled workers is narrowing. The reasons to which this is attributed are many, and are usually based on untested hypotheses. The following are some of the grounds given: the coming to maturity of industrial nations; surplus of unskilled labour in the early part of the century because of immigration; changing skill

requirements; the rise of industrial unionism; the availability of mass education; and the submersion of many craftsmen in large industrial units. Most likely all of these factors have contributed in some degree to the present trend of differentials. The above elements, however, cannot be ranked on the basis of existing evidence. It is suggested that further research is needed before any solid conclusions can be reached.

In recent years, Canada has been experiencing shortages of skilled employees. The narrowing of the wage differential rigidity in apprenticeship regulations and insufficient past investment in training are some of the grounds given for the presence of scarcity. Chamberlain suggests that differentials between skilled and unskilled workers provide incentives for workers to enroll in training for more demanding tasks. How important money wage differential is as a motivating force for employees to undertake long training leading to a craftsmanship status is not known. What is necessary is, again, more research in this area.

Although wages and wage differentials are not the only determinant in choosing an occupation, it is quite realistic to assume that in a materialistic society they would exert significant pressures. Assuming that this is one of the factors affecting the supply of skilled labour, is this relevant for craft certification practices of labour

relations boards? It certainly is. Board decisions which favour industrial over craft units and which have a tendency to submerge craft employees in industrial units will probably contribute to the narrowing of the wage differential between craft and non-craft employees. This statement does not imply, however, that liberal craft certification practices by the boards would reverse the wage differential trend or rectify the skill scarcities which might exist.

A number of arguments can be presented against the liberalization of board craft attitudes, such as: the existence of many craft units would restrict vertical and horizontal job mobility of unskilled and even skilled employees. This is a significant limitation in the age of rapidly changing technology. It is also claimed that craft interest can be protected within the context of industrial units, the protection being provided both by the industrial union and the employer. Therefore, no separation of craft employees is necessary. Whether this is true, and the extent of it is a debatable point, what is significant is the fact that in many cases craftsmen feel that they could do better on their own in separate groups. They probably are right, although at times they may be able to obtain the greater wage differential more on the basis of their bargaining power than on the grounds of their marginal productivity.

To conclude, although research data is lacking for relating wage differential and the supply of skilled labour, there most probably

is a cause-effect relationship between the two. In view of this, it is suggested that one of the certification criterion applied by boards in craft cases be the wage differential between craft and non-craft employees.

As indicated earlier, the multi-craft bargaining unit concept is introduced as an alternative to the present craft certification approach of labour relations boards. The multi-craft unit approach can be recommended for a number of reasons: it would uphold the difference between craft and non-craft employees, without the costs which are presently associated with such distinction. Some of the present costs are hostility of crafts towards technological change, narrow seniority units, restrictions on inter-firm mobility of labour, and jurisdictional conflict.

However, the multi-craft unit also has some drawbacks. Under such units, jurisdictional conflicts which previously took place outside the unit would probably be transferred into the unit. Also, the problems of transition would be enormous. Hostility of existing crafts towards such units would have to be taken into account. Although initially craft unions would probably be in opposition to a proposal which would alter their status quo, in the long run the crafts could benefit from it. Since, if the present craft certification trend continues, craft unions may face extinction under the status quo conditions.

This obviously would not be in the interests of the crafts, nor for that matter, of the economy.

Certifications of multi-craft units would pose a new set of difficulties for labour relations boards in terms of definition of a craft and in the determination of the appropriateness of a bargaining unit. These problems, however, are not insurmountable, and they have a great deal in common with some of the craft issues that the boards were confronted with in the past.

To conclude, the multi-craft unit approach does not suggest a drastic break with the past. There are situations where a single craft unit or the inclusion of craft employees in an industrial unit may be more appropriate than the determination of a multi-craft unit. But there may be many cases where the formation of a multi-craft unit is the most appropriate approach from the point of view of the bargaining parties and the economy.

In conclusion, flexibility and experimentation should be the byword of labour relations boards in the area of certification of craft bargaining units.

Chapter X considered the issues involved in current discussions as to the relative "appropriateness" of the system-wide versus the regional bargaining unit. In this connection, the legal considerations and the CLRB attitude towards fractionalizing of bargaining units

was examined. The chapter also studied the costs of fractionalizing which are investigated under the following headings: Current Trends, Bargaining Unit Dynamics, International Bargaining Units, National Unity, Bargaining Power, Wage Structure, Cost of Strikes, Company Unions.

One of the recommendations made in this chapter calls for the CLRB to express explicitly the criteria applied and weight given in each certification case concerned with determination of appropriateness of bargaining units. Implementation of this recommendation is to provide a valuable index for future certification applicants.

Another recommendation calls for legislation to stipulate criteria that the board is to consider in certification cases. Such legislation would not tie down the board to any particular criterion, and it would still leave it with broad discretionary powers. However, it would compel it to evaluate more criteria than it does presently. The chapter points out that most of the criteria applied by the CLRB in the past stress historical background -- that they are oriented to the past rather than to the future. It is suggested that the utilization of more "forward-looking" criteria is necessary.

Chapter X considered two approaches in an attempt to resolve the issue of the system-wide versus the regional bargaining unit: the "vacuum" approach and the "environmental" approach. The latter is

found to be more agreeable and in the current context its application, results in a recommendation favouring a revision of the present Canada Labour Relations Board practices. The Board's seeming pre-occupation with the maintenance of system-wide (or "national") units is not acceptable to Mr. Brody (the author of the chapter). He recommends more receptive attitudes toward applications requesting a fractionalization of national units.

The chapter concludes that fractionalization "may involve short-run costs to management, the public, and to the worker." However, a disregard of the sentiments of Quebec employees could lead to long-run costs which more than offset the short-term benefits of the maintenance of the status quo.

To conclude, this volume is not the final word on the bargaining unit; it suggests, however, a foundation for further research. Some of the study participants intend to continue their investigations further into the bargaining unit area. They also hope that this volume will be a catalyst for others to explore this field in greater depth.

FOOTNOTES

1. Woods and Ostry, op. cit., p. 271.
2. Archibald Cox, op. cit., p. 108.
3. F. R. Scott, op. cit., p. 46.
4. Ibid., p. 48.
5. Ibid., p. 49.
6. Woods and Ostry, op. cit., p. 502.
7. Ibid., pp. 497-98 (Italics not in original)

